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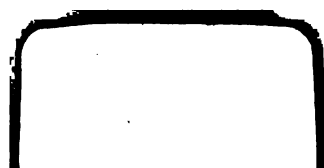
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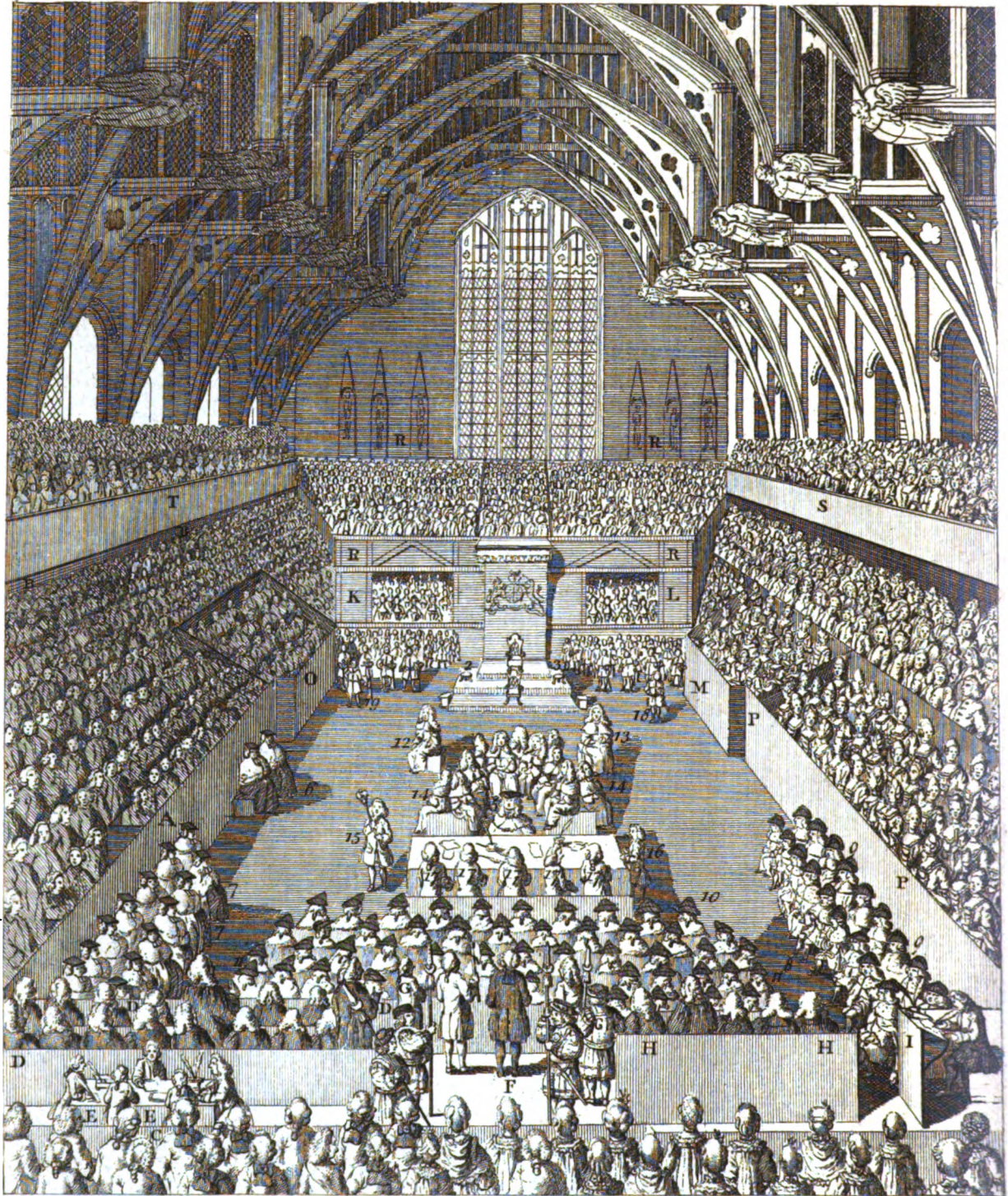
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542
Collection



The Representation of a PEER being Tried at Westminster-Hall.

A
C O L L E C T I O N
O F
T H E M O S T R E M A R K A B L E
A N D
I N T E R E S T I N G T R I A L S.

P A R T I C U L A R L Y

Of those PERSONS who have FORFEITED their LIVES to the injured
LAWS of their COUNTRY.

I N W H I C H

T H E M O S T R E M A R K A B L E

O F T H E

S T A T E T R I A L S

W I L L B E I N C L U D E D.

With the DEFENCE and BEHAVIOUR of the CRIMINALS,
before and after CONDEMNATION.

I N T E N D E D

Not only to point out the CRIMES of the GREAT, which are at present but little
farther known than their own FAMILIES;

B U T

Also those of INFERIOR CRIMINALS, who only are handed down as EXAMPLES to
POSTERITY.

V O L. I.

L O N D O N:

Printed for R. SNAGG, No. 129, FLEET-STREET.

M,DCC,LXXV.



NOV 21 1951
YASSEL

P R E F A C E.

AFTER what has so fully and concisely been observed in the title, it might perhaps be deemed unnecessary to trouble the reader farther with a preface; but as custom has ordained, that on ushering a new performance into the world, some apology should be made in its behalf, we shall not deviate from the general mode.

We shall not, (however) attempt to prejudice the public in favour of our work, as superior to every one that has preceded it. No! actuated by more generous and liberal motives, all that we shall say, is, that every endeavour will be exerted, to avoid the errors which most *forced* productions of this kind have been guilty of: in which many interesting trials have been omitted, and the powerful criminal has escaped infliction for private or partial views. No pecuniary bias prompts the present Proprietors, but every *remarkable* and *interesting* trial, both of the *titled villain*, or the *artful knave*, will be exposed to the public eye, and the most assiduous care will be taken to render our collection not only a valuable but an entertaining companion.

To youth, especially, our work will be a friendly monitor. Human frailty is subject to errors, and the juvenile part of mankind are most liable to receive the impressions of vice or virtue. Many and various are the means made use of to mislead the honest but unwary youth, and to draw him out of the plain paths of virtue and goodness. If, therefore, pointing out the road which others have taken, and by which they have been led into a destructive pit; if, the primary springs are exposed to their view, which have first instigated unfortunate wretches to their own destruction, can prevail; surely, the present plan will be of essential service, and the youthful reader may be taught by their misfortunes, to avoid the nets in which they were entangled, and shun the gulph of vice, which many, through inadvertency, have plunged into.

As the crimes of men also affect the public in general, it is obvious how useful a work must prove, which, by exposing public wickedness, arms every man with caution against the like designs. To those, therefore, who are more advanced in years, this collection will prove an agreeable entertainment and a friendly assistant to the memory. The various artful methods practised by designing villains to defraud and plunder, will be carefully and accurately inserted, according to the minutes that were taken down at their different trials, which may prove a cautionary guide to the industrious and honest man, to secure his property, by guarding against the like wiles, which others may attempt to impose upon him.

We shall conclude, by observing, that in the following compilation, great care has been taken to select those trials, where crimes or circumstances bear the marks of originality. State trials, in particular, will be carefully and minutely noticed, and in order to render our work as agreeable to the reader as possible, we have given in the frontispiece, A PERSPECTIVE VIEW OF WESTMINSTER HALL, with BOTH HOUSES OF PARLIAMENT, assembled on the Trial of a Peer.

EXPLANATION TO THE FRONTISPIECE.

A PERSPECTIVE VIEW of WESTMINSTER-HALL, with BOTH HOUSES OF PARLIAMENT, on the TRIAL of a PEER.

Also a VIEW of the PEERESSES, their Daughters, the Foreign AMBASSADORS, and the rest of the numerous Company, as they are ranged on the Scaffolding erected on such a solemn Occasion.

- | | |
|--|--|
| <ol style="list-style-type: none">1. The King's chair on the throne2. Prince of Wales's seat3. Duke of Cumberland's seat4. A chair for the Lord High Steward5. Lord High Steward removed from his chair, nearer the bar, for conveniency of hearing6. The two Archbishops7. Bishops on two benches8. The great officers of state, Dukes and Marquisses, on the front seat9. The Barons seated behind the Dukes10. Earls and Viscounts | <ol style="list-style-type: none">11. The remainder of the Barons seated behind the Earls and Viscounts12. The Master of the rolls13. The Judges sitting on the inside of woolpacks, and the Masters in Chancery sitting on the outside14. The Serjeant at Mace15. Lord High Steward's Purse-bearer16. Clerks belonging to the House of Lords17. Four Mace-bearers and two Heralds in front, behind them Peers sons, all of them standing18. Four Mace-bearers, and Lord High Steward's gentlemen, all of them standing |
|--|--|

REFERENCES to the Scaffolding round the HOUSE of LORDS.

- | | |
|--|--|
| <ol style="list-style-type: none">A. The Speaker of the House of CommonsB. The Members of the House of Commons on the side seatsC. Other Members of the House of Commons in front seatsD. The Managers for the House of CommonsE. The Solicitors and Clerks belonging to the ManagersF. The Prisoner at the bar with the Lieutenant of the Tower on his right hand, and the Gentleman Jayler with the ax on his leftG. The Witness giving evidenceH. The Prisoner's CouncilI. Writer taking the trialK. The King's box with a velvet chair, and Ladies on six rows of benchesL. The Prince of Wales's box, with Ladies seated on six benches | <ol style="list-style-type: none">M. A box with benches for the Duke of Cumberland, Princesses, and their attendants. Behind this box are three benches for the use of the Lord High Steward's family, and one bench for the Lord Chief JusticeN. Another box for the PrincessO. The box for foreign AmbassadorsP. Peeresses and their daughters on four benchesQ. Seats for peers ticketsR. A gallery at the south end of the hall, containing seventeen rows of seats, holding eight hundred and sixty people. At the north end is another gallery, filling the whole space behind the Commons and the benches for peers ticketsS. Gallery belonging to the Board of Works and the Vice ChamberlainT. Another gallery |
|--|--|

N. B. All the seats are covered, and the scaffolding hung with red bays, excepting where the House of Commons sit, and that is covered with green bays.

A N .

Alphabetical T A B L E

O F T H E

NAMES of the Persons tried or proceeded against,
the Crimes for which they were tried, and the
Punishments of such as were convicted in the
first Volume.

Year	Names.	Crimes.	Punishments.	Page.
B				
1605	Bates, Thomas	High Treason	Hanged	9
1631	Broadway, Thomas	Sodomy	Hanged	19
1663	Brewster, Thomas	High Treason	Fined 100 Marks and Pillored	173
1663	Brooks, Nathan	High Treason	Fined 40 Marks & Pillored	173
C				
1648	Charles, King	High Treason	Beheaded	108
1667	Clarendon, Earl of	Impeached	Committed	217
	Cornwallis, Lord	Murder	Acquitted	352
D				
1605	Digby, Sir Everard	High Treason	Hanged	9
1663	Dowle, Simon	High Treason	Fined 40 Marks & Pillored	173
1678	Danby, Earl of	High Treason	Committed to the Tower	316

ALPHABETICAL TABLE.

Year.	Names.	Crimes.	Punishments.	Page.
E				
1600	Essex, Earl of	High Treason	Beheaded	5
1614	Essex, Robert, Earl of	Impotency	Divorced	162
F				
1681	Fitzpatrick,	Sodomy	Hanged	19
1605	Fawkes, Guy	High Treason	Hanged	9
1682	Ford, Lord Grey	Forced Marriage	Acquitted	490
G				
1605	Grant, John	High Treason	Hanged	9
1679	Gascoigne, Sir Thomas	High Treason	Acquitted	362
H				
1688	Hampden, Mr.	High Treason	Fined 40,000 <i>l.</i> and committed	653
K				
1605	Keys, Thomas	High Treason	Hanged	9
1664	Keach, Benjamin	Libel	Pillored twice	211
L				
1643	Laud, Wm. Archbishop	High Treason	Beheaded	81
M				
1586	Mary, Queen of Scots	High Treason	Beheaded	1
1631	Mervin, Lord Audley	Sodomy	Beheaded	18
1670	Mead, William	Tumult	Committed & fined	405
O				
1685	Oates, Titus	Perjury	Pillored	631
P				
1678	Pembroke, Earl of	High Treason	Discharged	280
1670	Penn, William	Tumult	Committed & fined	405
1680	Palmer, Roger, Earl of Castleman	High Treason	Acquitted	414

ALPHABETICAL TABLE.

Year	Names.	Crimes.	Punishments.	Page
R				
1603	Raleigh, Sir Walter	High Treason	Beheaded	9
1605	Rockwood, Ambrose	High Treason	Hanged	9
1660	Regicides, Twenty-nine	High Treason	Hanged	132
1683	Ruffel, Lord	High Treason	Beheaded	536
S				
1640	Strafford, Earl of	High Treason	Beheaded	20
1677	Shaftsbury, Earl of	Contémp	Committed to the	268
1681	Shaftsbury, Earl of	High Treason	Tower	
1683	Sidney, Algernone	High Treason	Beheaded	450
1688	Sancroft, Wm. L. A. B. of Canterbury	Libel	Acquitted	580 712
T				
1663	Tyne, John	High Treason	Hanged	173
U				
1620	Verulum, L. Chancellor	Bribery and Corruption	Fined 40,000l.	10
W				
1605	Winter, Robert.	High Treason	Hanged	9
1605	Winter, Thomas	High Treason	Hanged	9

THE

A

COLLECTION

OF THE MOST

REMARKABLE TRIALS.

TRIAL of MARY, Queen of SCOTS, for a Conspiracy
against Queen ELIZABETH, at Fotheringay Castle, in
Northamptonshire, October 12, 1586.

THERE having been several conspiracies set on foot by the Roman Catholics against Queen Elizabeth, with a view of advancing the Queen of Scots to the throne, and thereby restoring their religion, the nation had voluntarily entered into an association, for the safety of the Queen's person, obliging themselves, by their oaths, to revenge her Majesty's death on those who should be authors of it. Which association was approved and confirmed, by a statute made the twenty-seventh of Elizabeth, anno 1585; and it was also further enacted, That, if any invasion, or rebellion, should happen in any part of her Majesty's dominions; or any attempt should be made, to the hurt of the Queen's person, by, or for any person that should pretend a title to the crown, after her Majesty's decease; or if any thing should be composed or imagined, tending to the hurt of her Majesty's person, with the privy of any one, that might pretend a title to the crown: her Majesty, by her commission under the great seal, directed to the Lords, and others, of her Privy-council, and to such other Lords as should be named by her majesty, amounting to twenty-four, at least, might authorize them to examine all and every such offences, and to give sentence therein, on the evidence that should be produced before them; and the Queen of Scots being suspected to be at the bottom of Babington's conspiracy, a commission was issued, for the trial of the Scottish Queen, by virtue of

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the said act, being directed to the Archbishop of Canterbury, the Lord Chancellor, the Lord Treasurer, and above forty noblemen more, to whom were added five of the Judges.

The Archbishop did not act in this commission: but the Lord Chancellor, and thirty-six of the commissioners, assembling at Fotheringay Castle, the eleventh of October, gave notice to the Scottish Queen of their arrival, the next day requiring her to appear before them. To which message she answered, she was an independent Princess, and the commissioners could have no jurisdiction over her: however, having made a protest, that she owed no subjection to the crown of England, she did, at length, agree to appear before them (she said) to manifest her innocence to the world, and, that she might not lie under so foul an aspersion, as the conspiracy to assassinate the Queen of England.

Then the Queen's counsel charged her with being privy to Babington's conspiracy, and with approving and encouraging it: for proof whereof, they produced copies of Babington's letters, and his examination, wherein he declares, she wrote answers to them; in one of which, she commended and approved his design: a copy of a letter from the Lord Charles Paget, to her, also was read (which Curl, one of her secretaries, had attested, she received) reciting a conference between the said Paget, Mendoza, the Spanish ambassador, and Ballard the priest, one of the conspirators, importing, that an invasion was intended, in order to set the Queen of Scots at liberty; the examinations of her secretaries, Naw and Curl, also were read, to prove the letters that passed between her and Babington, relating to the conspiracy.

She was charged also, with allowing a pension to Morgan, who sent over Parry (already mentioned) to kill the Queen.

Her letters to the Lord Charles Paget;

also were read, wherein she declares, That the Spaniard had no other way to reduce the Netherlands, but by setting a Prince on the throne of England, that might be serviceable to him; and intreats Paget to hasten the forces that were to invade England: a letter of Cardinal Allen's to the Queen of Scots, also was read, wherein he stifles her, His Dread Sovereign; and acquaints her, that her affairs were committed to the care of the Prince of Parma.

Then she was charged with a design of transferring her right to the succession of the crown to the Spaniard; upon which the Queen's counsel harangued for some time, observing how precarious all their honours, liberties and properties, must be, if such a conveyance should take place. To which the Lord Treasurer answered, that the kingdom of England could not be so transferred to a foreigner; but must descend according to the laws of succession.

To this charge the Scottish Queen answered, That she knew not Babington, or ever wrote to, or received letters from him; nor had she ever plotted the destruction of the Queen; that they ought to produce something under her own hand, to make good the charge; that many letters, indeed, had been sent to her, by people unknown, offering their assistance; but she had excited no man to commit any offence; and, being shut up in prison, could neither know, or prevent, what others attempted; that Babington might have confessed such things, to save himself; that she had, indeed, done her best endeavours to recover her liberty, which nature itself allowed, and solicited her friends for that end: but that she would not purchase the kingdom with the death of the meanest man, much less of the Queen; that it was an easy matter to counterfeit the cyphers and characters of others; and, she feared, this had been done by Walsingham, to destroy.

destroy her, who had practised both against her life, and her son's, as she was informed; whereupon Walsingham protested, he had no malice against her, but had acted as the duty of his post required.

Then she insisted, that her secretaries, Naw and Curl, ought to have been produced in court, and given their evidence in her presence, since the whole stress of the proof seemed to rest upon their testimony; they might also, she observed, have written what she never dictated, and letters might come to them, which she never saw; however, were they produced, she was confident they would acquit her of all guilt.

As to her allowing a pension to Morgan, who sent over Parry to kill the Queen, she said, she always forbade him encouraging any such attempts, though she confessed she had given him a pension, on account of some services he had done her; and, on the other hand she observed, that the Queen of England made no scruples of allowing pensions to her enemies in Scotland.

She lamented, that the most reasonable conditions she could propose to Queen Elizabeth, had always been rejected, even when she offered to deliver her own son, and the Duke of Guise's son, for hostages and pledges; that neither the kingdom of England, or the Queen, should receive any damage from her being at liberty. She complained, that her honour and reputation had been called in question, and insulted by foreign lawyers, who, by wretched conclusions, drew every circumstance into a consequence; but, that princes, anointed and consecrated, were not subject to the laws of any particular country, as private persons were.

To this the Lord Treasurer replied, That she, or the Scots, were the occasion, that all she had proposed to the Queen failed of success; for the Scottish lords absolutely refused to deliver up her son, as an hostage; and, while the last treaty was negotiating,

Morgan, a dependant of her's, privately sent over Parry to murder the Queen; and asserted, that the commissioners had full authority, to call her to an account, for her practises against the Queen and kingdom.

Then the Queen of Scots proceeded in her defence, and said, That as to Cardinal Allen, she held him to be a reverend prelate of the church; but in what quality she was esteemed by the Pope, or foreign Princes, she knew not; nor could she prevent their styling her *Queen of England*, in their letters; she did not deny her treating with the Spaniard, to convey her right in the kingdom to him; but said, all her hopes in England being desperate, she was fully resolved not to reject foreign aid; and concluded, with requiring she might be heard in full parliament, or, at least, that she might speak with the Queen in person, not doubting but she would have some regard to a sovereign princess, her near relation.

Then the commissioners adjourned to the 29th of October, to the Star Chamber in Westminster, when they pronounced the following sentence.

That, after the first day of June, in the 27th year of the Queen, and before the date of their commission, divers matters had been compassed, and imagined, by Anthony Babington, with the privity of Mary Queen of Scots, pretending a title to the crown of England, and tending to the hurt, death and destruction of the royal person of the Queen; and, that the said Mary, pretending a title to the crown of England, had also, herself, within the time aforesaid, compassed and imagined divers matters, tending to the hurt, death, and destruction of the royal person of the Queen, contrary to the statute of the 27th of Elizabeth.

The parliament meeting the 29th of the same month of October, approved the sentence.

sentence of the commissioners, and addressed her Majesty, that, as well in respect of the continuance of the true religion, and the safety of her royal person, as in regard to the preservation and defence of her subjects, she would be pleased to give her speedy orders, that the said sentence might be published by proclamation, and directions given, for farther proceedings against the Scottish Queen, in pursuance of the aforesaid statute; for that, upon advised and great consultation, they could not find there was any possible means of providing for her Majesty's safety, but by the just and speedy execution of the said Queen. And that, if the said sentence was not speedily executed, they despaired of the continuance of the true religion, of her majesty's life, and the safety of her faithful subjects.

To this address, the Queen answered, That if her life alone depended upon it, and not the safety and welfare of her people, she would most willingly pardon her. Nay, if England might, by her death, attain a more flourishing estate, and a better Prince, she would most gladly lay down her life, for it was only for her people's sake, she desired to live. They had, she said, by the last act of parliament, brought her to a very great strait, that she must give orders for her death, who was a prince's most nearly allied to her in blood, and whose practices against her had so overwhelmed her, with sorrow, that she had been glad to absent herself from this parliament, lest she should increase her grief by hearing it spoken of, and not out of fear or danger, as some thought; though it was not long since she had seen, and read, an oath, wherein some had bound themselves to kill her within a month. However, she hoped they did not expect any present resolution; for, in matters of less moment, she used to deliberate long.

About a fortnight after, her majesty sent a message to both houses, desiring they would devise some means, that the Queen of Scots life might be spared; which occasioned a second address; wherein they again represented to her, that her majesty's safety could not possibly be secured, so long as the Scottish Queen lived; and, therefore, renewed their instances for her speedy execution.

Still the publication of the sentence was deferred, on the intercession of the French ambassador; but, at length, on the instance of some courtiers, it was proclaimed in London, and in all the counties of England; and the Lord Buckhurst, and Beal, one of the clerks of the council, were sent to the Queen of Scots, to acquaint her with it, and persuade her to acknowledge her offences, and expiate them before her death by repentance; they let her know at the same time, that, as long as she lived, the established religion in England must be precarious; at which she triumphed, and gave God thanks, that she was esteemed capable of restoring the true religion in this island.

The Queen, Camden observes, was extremely perplexed how to act in this affair, news being brought her daily of intended invasions, assassinations, or insurrections; whereupon she thought fit to give orders to Davison, one of her secretaries of state, to draw a warrant for the Queen of Scots execution, and have it passed under the broad seal, to lie in readiness, in case of any further attempts against her life, or the peace of the kingdom; but the Queen, it is said, altering her mind the next day, told Davison, she would not have the warrant drawn. To which he answered, it was already drawn, and had passed the great seal, in pursuance of her commands; at which she seemed surprised, and checked him for making so much haste, ordering him not to communicate the warrant to any one:

one; but Davison, a great zealot in religion, imagining the fate of the kingdom depended on the execution of the Queen of Scots, acquainted the rest of the council, that the warrant for her execution had passed the great seal, without informing them, that her Majesty had since altered her mind; whereupon the Lords, to whom the warrant was directed, were ordered by the council to repair to Fotheringay, and see it executed; and the Queen of Scots was accordingly executed in the hall of the Castle of Fotheringay, on the 8th of February 1586-7, in the 46th year of her age; when she expressed a great contempt of death, and even looked upon it as her great happiness, that she was brought to suffer for her steadiness to religion; still denying she had ever practised any thing against the life of the Queen.

When her majesty heard of the execution of the Queen of Scots, she appeared to be in a great consternation; but having, after some time, recovered herself, she reprimanded the council severely, and commanded them out of her sight. Even the Lord Treasurer Burleigh was banished the court, as appears by several letters in Strype's collection, wherein he begs to be re-admitted to favour; and Davison, the Secretary, was tried in the Star Chamber, for a misdemeanor, before the two Archbishops; the Earls of Worcester and Cumberland; the Lord Grey; the two Chief Justices; the Chief Baron, and several other commissioners, who sentenced him to pay a fine of ten thousand marks, and to be imprisoned during the Queen's pleasure.

The TRIAL of ROBERT Earl of ESSEX, and HENRY Earl of SOUTHAMPTON, for High Treason, on the 19th of February 1600.

THE prisoners were indicted for High Treason, in compassing and imagining the death of the Queen, and subversion of the government, and raising an insurrection and rebellion, for that end; particularly, they were charged with conspiring to surprize her Majesty in her palace; with imprisoning several members of the Privy-Council; inciting the citizens of London to sedition and rebellion; assaulting the Queen's forces in the streets; and holding out Essex-House against her Majesty.

The evidence, produced against the prisoners, was, first, Henry Witherington,

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who deposed, That the prisoners defended Essex-House, and imprisoned the Privy-Counsellors.

Sir Walter Raleigh deposed, That he met Sir Ferdinando Gorges, upon the Thames, who told him, that the Earl of Essex had a strong guard in his house, and it was like to be a bloody day's work.

Sir Ferdinando Gorges' examination also was read, who deposed, That the Earl of Essex sent for him up to town; complained of his disgrace at court, which he could not endure; said, that great numbers of noblemen and persons of quality, were discon-

C

tented

tented, and would join him; and desired the deponent's assistance; that they had several consultations, concerning surprizing the court, seizing the Tower, and making an insurrection in the City: that the deponent dissuaded the insurrection; and the Earl of Southampton said, "It was three months since the plot began, and should they resolve on nothing?"

The examination of Sir Charles Danvers also was read, who deposed, That the prisoners conspired to surprize the court, and seize the tower: that the guards also were to be secured, in order to get access to the Queen; and that afterwards, the Earl of Essex resolved to call a parliament to redress grievances: and Sir John Davies gave the like evidence.

Sir Christopher Blunt confirmed the evidence of the two last witnesses; and added, that the Earl intended to have altered the government.

The Earl of Rutland deposed, He heard the Earl of Essex cry out in the streets, "England is bought and sold to the Spaniards;" and, that the Earl of Southampton was a malecontent, and confederated with Essex.

The Lord Sands deposed, That the Earl of Essex, being repulsed at Ludgate, ordered his followers to charge: and there were other witnesses produced that confirmed the evidence already given.

To this, the Earl of Essex answered, That what he had done was in order to his own defence, without any disloyal intentions

to her Majesty: he only designed to present himself before her, with eight or nine persons, to entreat her to remove some evil counsellors, who had abused her with false informations; particularly Cobham, Cecil, and Raleigh; concluding with protestations of his innocence, and, that he had never any design upon the Crown of England, as the Attorney General (Coke) had affirmed: and he said, he was no favourer either of Papists or Sectaries.

The Earl of Southampton acknowledged their going through the city was a foolish action; and, that their design of going through the City with an armed force to court was only that their enemies might not hinder their passage to the Queen; before whom they intended to prostrate themselves, and submit to her mercy: and, that he never heard the proclamation said to be made by the Lord Burleigh.

Then the Lords, withdrawing for about half an hour, returned, and brought in both the prisoners *Guilty* of High Treason; and sentence was pronounced against them accordingly.

On the 25th of the same month, the Earl of Essex was beheaded on a scaffold within the Tower: he acknowledged, when he came to die, that his punishment was just; and seemed most concerned that he had drawn so many of his friends into the same guilt.

As to the Earl of Southampton, he was suffered to live; but remained a prisoner for some time.

Sir

Trial of Sir WALTER RALEIGH, Knight, for HIGH TREASON, at Winchester, the 17th of November, 1603.

THE indictment charges the prisoner with high treason, in compassing and imagining to depose and destroy the King; and particularly that he met and consulted with the Lord Cobham, how to advance the Lady Arabella Stuart to the throne; and that, in order to it the Lord Cobham was to go over to the Archduke, the King of Spain, and the Duke of Savoy, to procure their assistance, and carry letters from the Lady Arabella, with him, promising she would procure a peace between England and Spain, tolerate Popery, and be directed by them in her marriage; and that Cobham, at the instance of Sir Walter, did write to Aremberg, the Archduke's Ambassador, to obtain 600,000 crowns, for carrying on these designs; which sum the ambassador promised to pay: that Cobham promised Sir Walter 8000 crowns of the money, which he agreed to accept; and that Sir Walter also had published a book against the King's title.

Sir Edward Coke, the attorney-general, having opened the Indictment, and given Sir Walter Raleigh a great deal of scurrilous language, proceeded to produce the evidence. And first, the examination of the Lord Cobham was read, wherein he confesses his going over to Flanders, to the Archduke, and getting a pass, to go to Spain, to solicit that King for 600,000 crowns; and that he was to return home by Jersey, and consult Sir Walter Raleigh there, concerning the distribution of the money among the disaffected in England: And further deposed, that he had not entered into these courses, but by the instigation of Sir Walter, curling him, and calling

him villain and traytor for seducing him. A letter also of the Lord Cobham's was read, of the same tenor.

The examination of one Lawrency also was read, who deposed, that Sir Walter supped with Cobham that evening Cobham went to Aremberg, the Archduke's Ambassador.

Then Sir Walter's own examination was read, wherein he says, Cobham offered him 8000 crowns, if he would promote a peace between England and Spain. To which the deponent replied, When I see the money, I will tell you more; for he thought it one of Lord Cobham's idle conceits, and therefore made no account of it.

Cobham's deposition also, concerning the book, was read, wherein he deposed, that he had a book from Raleigh, written against the King's title, and Raleigh said, it was foolishly written.

The only living witness produced against the prisoner, was one Dyer, who deposed, that he heard a gentleman say, at Lisbon, the King would never be crowned; for Don Raleigh, and Don Cobham would cut his throat ere that day came.

Then a letter of the Lord Cobham's was produced, where he says, that Raleigh sent to him in the tower, to retract his evidence; and that Raleigh was to have had 1500l. per annum of the Spaniard, to give intelligence when any thing was designed against the Spanish territories.

To this Sir Walter Raleigh answered, that he knew nothing of the Lord Cobham's practices with Aremberg, and protested, he had never heard of the name of the Lady Arabella Stuart: that it was very unlikely he

he shou'd send Lord Cobham to Spain; and more unlikely that Spain should attempt another enterprize against England, which had met with so many repulses, and their royal navy now destroyed and sunk to nothing; and that the crown of Spain was too much impoverished at this day, to lend 600,000 crowns on so precarious a project: that it was very unlikely also, he should promote a peace with Spain, who had written a book expressly against a peace, which he intended to present to his Majesty: that it was not enough to accuse a man generally; but the Lord Cobham ought to give some account of the reason of the undertaking: some other proof ought to be produced, besides the deposition of one who acknowledged his guilt: there ought to be two credible witnesses, brought face to face, in cases of treason; and here had not one witness appeared: and as to the book he was charged with, he had it in the late Lord Treasurer's study, who had written in it "This is the book of Robert Snaggs. That he never read it, commended it, or communicated it to any man; and the book had been burnt long ago.

Then he returned to speak to the first part of the charge, and said, it was not likely that he, who had spent 40,000 crowns against the Spaniard, should now become so affected to him, as to accept a pension from that crown: and in answer to the deposition of the Lord Cobham, he produced a letter from the same Lord, written after his examination, when he was sick and like to die; wherein he says, "Seeing myself so near my end, for the discharge of my conscience, and freeing myself from your blood, which else will cry vengeance against me, I protest, upon my salvation, I never practised with Spain upon your procurement. God-so comfort me in this my affliction, as you are a true subject, for any thing I know. I will say as Pilate, "Purus sum a sanguine hujus:" so God have mercy

upon my soul, as I know no treason by you."

To this defence the Attorney-General replied, chiefly with invectives and ill language, telling Sir Walter, he was the most notorious traitor that ever came to the bar; and that when he had taken off the King, he would have altered religion: that he was a monster, a Viper, had an English face, but a Spanish heart; and that the witnesses need not be brought face to face: and the Lord Chief Justice added, that the statute, which required this, was repealed; in which the rest of the court concurred.

The Attorney-General also said, that the crown could never stand a year upon the King's head, if a traitor might not be condemned upon circumstances: that it did not consist with the King's safety that the prisoner should be acquitted; protesting before God, that he never knew a clearer treason, and that Sir Walter was the most vile and execrable traitor that ever lived; after which followed this inimitable dialogue:

Raleigh. You speak indiscreetly, and barbarously.

Att. Gen. I want words to express thy viperous treasons.

Raleigh. I think you want words, indeed; for you have spoken one thing half a dozen times.

Att. Gen. Thou art an odious fellow; thy name is hateful to all England for thy pride.

Raleigh. It will go near to prove a measuring cast, between you and me, Mr. Attorney.

Then Mr. Attorney produced Lord Cobham's letter, wherein he says, Raleigh sent to him in the Tower, to retract what he had said. To which Raleigh answered, he confessed he did send a poor fellow, to throw a Letter into his window, with these words, viz. "You know you have undone me: now write three lines to justify me."

The

The Lord Chief Justice then demanded of the prisoner, what he said to his being promised a pension of 1500*l.* per annum.

To which he answered, Cobham was a base, dishonourable, poor soul: and the Chief Justice replied, I perceive you are not so clear a man as you have protested all this while.

During the trial, the Lord Admiral Nottingham, being in Court with the Lady Arabella, stood up, and declared, that the

Lady protested, upon her salvation, that she never dealt in any of those things, and so desired him to inform the court; she acknowledged, indeed, she received a letter from the Lord Cobham, to prepare her; but she laughed at it, and immediately sent the letter to the King. The evidence being given and summed up, brought the prisoner in guilty, and judgment passed on him as a traitor.

The Arraignment of ROBERT WINTER, JOHN GRANT, THOMAS BATES, THOMAS WINTER, AMBROSE ROOKWOOD, ROBERT KEYES, GUY FAWKES, and Sir EVERARD DIGBY, for HIGH TREASON, on the 27th of January 1605.

THE indictment charges the prisoners with compassing and imagining the death of the King, Queen, &c. and the subversion of the established religion and government; and, particularly, with consulting and agreeing, to blow up, and tear in pieces, the King and Queen, Prince Henry, the Lords Spiritual and Temporal, and the Judges, and Commons assembled in Parliament: and that, they did not only conspire, and conclude to destroy, the King's issue male, but to surprize his daughters, the two Princesses, Elizabeth and Mary, and to proclaim the said Elizabeth Queen: and that they took their oaths, and received the Sacrament, to conceal the said treasons, and never desist, till they had accomplished the same: that they, afterwards, dug a mine in the foundation walls of the Parliament-House, being three yards thick; and, being discouraged by the difficulty of that work, they hired a cellar

under the Parliament-House, in which they placed twenty barrells of gun-powder; and, fearing the said powder was become damp, bought in ten barrells and four hogheads more of gun-powder; covering the whole with iron bars, stones, billets, and faggots: and that, the said Guy Fawkes had procured touchwood and match, and was prepared to set fire to the same, at the time prefixed: that the said traitors had also provided horses, armour, ammunition, and other implements of war; and published divers false reports, as if the Papists were to have been massacred; whereby divers Papists were incited to appear in arms, and were in open and actual rebellion, against the King, in several parts of England.

To which indictment, the prisoners severally pleaded, *Not Guilty*; but their examinations, wherein they had confessed these treasons, being shewn them, they acknowledged the same to be true in court;

and, thereupon, without any further trial, their confessions were recorded.

Sir Everard Digby also was arraigned for the same treasons, and pleaded *Guilty*: whereupon judgment of High Treason was pronounced on Sir Everard Digby, Robert

Winter, John Grant, Thomas Bates, Thomas Winter, Ambrose Rookwood, Robert Keys, and Guy Fawkes; and the four first were executed at the west-end of St. Paul's; and the rest in the Old Palace-Yard, Westminster.

Trial of the Right Honourable FRANCIS, Lord VERULAM, Viscount St. ALBANS, and Lord CHANCELLOR of ENGLAND, for BRIBERY and CORRUPTION, the 19th of March, 1620.

ON Thursday, the 15th of March, 1620, Sir Robert Phillips, from the Committee of the Commons, appointed to enquire into abuses in the courts of justice, reported to the house, that they had received two petitions, charging the Lord Chancellor with corruption in his office.

That the first petition was from Awbrey, which shewed, that he having a cause depending before the Lord Chancellor, and being tired with delays, was advised by some near my Lord, to quicken him, by making his Lordship a present of 100l. that he, thereupon, with some difficulty, procured the said sum of an usurer, and went with Sir George Hastings and Mr. Jenkins, to the Lord Chancellor's house in Gray's Inn, and those two gentlemen carried in the money to his Lordship, and when they came out, said my Lord was thankful, and assured him of success in his business.

That Sir George Hastings, a member of the house, had acknowledged the giving Awbrey that advice, and carrying in the money to my Lord; but said, he presented it as from himself, and not from Awbrey; nor had it the effect that the petitioner

expected. This charge was confirmed by several letters.

The second petition was from Edward Egerton, who shewed that he was persuaded by Sir George Hastings and Sir Richard Young, to present his Lordship with a sum of money; but that he had before given my Lord a piece of plate, of the value of 52l. as a testimony of his love; and now he procured 400l. and sent it to his Lordship by Sir George Hastings and Sir Richard Young, as a gratuity for what my Lord had done for him, when he was Attorney-General; that these gentlemen told the petitioner, my Lord scrupled the taking it at first, and said it was too much, but was at length persuaded to take it, as for favours passed, and returned him thanks, saying, he did not only enrich him, but laid a tie on him, to assist him in his lawful business; that Sir George Hastings and Sir Richard Young, members of the house, acknowledged the delivery of the purse; but said, they knew not what was in it.

The report also took notice, that Doctor Field, now Bishop of Landaff, had undertaken to procure Mr. Egerton success in his cause, on condition of his entering into a recog-

recognizance of 10,000 marks; with condition, that if my Lord Chancellor decreed it for him, 6,000 marks should be distributed among those honourable persons that solicited his cause for him.

his matter being ordered to be further considered by the committee, Sir Robert Phillips reported on the 17th of March, that it appeared plainly in Awbrey's case, there was a suit depending at the time the money was presented, and that Sir George Hastings had at length acknowledged, when he gave the Lord Chancellor the 100 l. he said, that it was to help Awbrey in his cause. However, not long after, a very prejudicial and murdering order was made against Awbrey; whereupon Sir George moved, it might be rectified; and my Lord promised to do it; but did not; and that there were letters produced from Awbrey to the Lord Chancellor about this business.

And, in Egerton's case, when the 400 l. was presented to the Lord Chancellor, there was a suit depending in the Star Chamber, and Sir Rowland Egerton, about the same time, preferred a petition to the King, for a reference of the matter to the Lord Chancellor; whereupon his Lordship caused Mr. Edward Egerton to enter into a bond of 6,000 marks, to stand to his award; and an award being afterwards made, and refused by Edward, a suit was, by the Lord Chancellor's direction, commenced against him, and the bond of 6,000 marks assigned over to Sir Rowland Egerton; and then it was, that Doctor Field advised Mr. Edward Egerton to apply himself to Mr. Dampart and Sir John Butler, to solicit his cause for him, and drew Mr. Edward into a bond of 10,000 marks, for the payment of 6,000, as related already; and it being demanded of Dampart, how much he and Doctor Field were to have of the money, he answered, he did not remember the certain

sum; but it was more than any cause could deserve, in any court of justice.

That in Awbrey's case, it appeared, that Sir George Hastings, being at Hackney, where he dwelt, was sent for by the Lord Chancellor, and when Sir George came, the lord Chancellor ordered every body else out of the room; and said, "Sir George, I am sure you love me; and, I know that you are not willing that any thing done by you should reflect dishonour upon me. I hear, that one Awbrey intends to petition against me: he is a man, that you have some interest in; you may take him off if you please;" and that Sir George afterwards desired Awbrey, to let him see his petition; and he shewed it to my Lord, and his Lordship promised to do him justice; but he could have no remedy, and so the petition went on.

That, some time after, Sir George, discoursing with the Lord Chancellor, told him, "He must lay it (the business of Awbrey) upon his Lordship;" to which my Lord replied, "If you do, George, I must deny it upon my honour."

Upon this report, it was moved that Sir George Hastings and Sir Richard Young, might be sequestered from parliament; but they were permitted to keep their seats; and it was ordered, that the complaint of Awbrey and Egerton against the Lord Chancellor and the Bishop for corruption, should be drawn up by Sir Robert Phillips, Sir Edward Coke, Mr. Noy, and Sir Dudley Diggs; and that the same should be related to the Lords, without prejudice or opinion, at a conference.

The same day the Commons received a message from his Majesty, in which he said, he was sorry to hear of the complaints against the Lord Chancellor: it had always been his care, to advance the best men to places, though no man could prevent such accidents: but his comfort was, the house was careful to preserve his honour; and proposed

proposed a committee of six of the upper house, and twelve of the lower house, to examine the matter.

In answer to which, the Commons desired the like message might be sent to the Lords, that they might have a conference with them about it.

On the 20th of March, Sir Robert Phillips reported from the conference, that the Lords demanded, if they would not reduce their complaint into writing: and it was resolved, that they would not; it only consisting of two or three points, clear and plain.

A message came from the Lords the same day, signifying, that they had taken into consideration the last conference, and should need the testimony of two members of that house, desiring they might attend voluntarily, without order, as private persons, and give their testimony upon oath; and it was answered, that they would attend as private gentlemen, and be examined.

Sir Robert Phillips reported further, that the committee of the Commons had examined Churchill, one of the Registers in Chancery; and it appeared, that the Lady Wharton having a cause depending there, an order was made for the dismissal of her bill, by the consent of the council on both sides; which the Lady disliking, took Churchill into her coach, and carried him to the Lord Chancellor's; and so managed the matter, that the Register was commanded not to enter the last order; and my Lady being left at liberty, thereby, to prosecute her suit, brought it to a hearing, and obtained a decree.

That — Keeling being examined, declared, that about the time of passing the said decree, my Lady took an hundred pounds, and carried it to York-House to the Lord Chancellor, in a purse; and my Lord asking her, What she had in her hand? she answered, a purse of her own making, and presented it to him; who

took it, and said, What Lord could refuse a purse of so fair a lady's working? That, afterwards, my Lord decreed for her; but the decree was not perfected till 200l. more was given, in the presence of one Gardiner.

Gardiner, Keeling's man, confirmed the payment of the 300l. for the decree, viz. 100l. first, and 200l. afterwards; and this purchased decree being lately damned by the Lord Chancellor, occasioned the Lady's complaint.

Keeling added, that Sir John Trevor presented the Lord Chancellor with 100l. by the hands of Sir Richard Young, for a final end of this cause; and Sir Richard Young declared, that when he attended the Lord Chancellor, Sir John Trevor's man brought a cabinet, and a letter to my Lord, and entreated him to deliver it, which he did openly.

On the 21st of March, 1620, Sir Robert Phillips reported, that they were informed of several other corruptions, by Keeling and Churchill; particularly, that his Lordship had taken great sums in the causes of Hull and Holman, Wroth and Manwaring, Peacock and Reynell, Barker and Bill, Smithwick and Welch; that, in this, and other causes, my Lord would decree part, and when he wanted more money, he would send for more, and then decree another part; and in most cases my Lord's servants had undertaken one side or another, insomuch, that it was usual for counsel, when their clients came to them, to ask what friend they had at York House?

It being ordered that a message be sent to the Lords, by Sir Robert Phillips, to relate the case of the Lady Wharton, and the informations of Churchill; Sir Robert reported from the Lords, That they acknowledged the great care of the Commons, returned them thanks for their correspondence, and assured the like on their part for ever.

The

The case of the Lord Chancellor coming under debate in the House of Peers, the 19th of March, the Lord Admiral^e presented a letter to that house, the same day, from his Lordship, desiring them to excuse his absence, because he was so very ill, that he thought he had but a very little time to live; however, understanding there were some complaints of base bribery coming before their Lordships against him, he would be glad to preserve his honour and fame, and therefore requested, 1. That they would preserve a good opinion of him till his cause was heard. 2. That they would give him time to advise, with counsel, and put in his answer, 3. That he might be allowed to except against the witnesses, to cross examine them, and produce his own witnesses; and, Lastly, that their Lordships would not be prejudiced against him from the number of complaints that should be exhibited, considering he did not make less than two thousand orders and decrees within the space of a year, and the courses that were taken to hunt out complaints against him; but that he might answer them separately, according to the rules of justice.

To this letter their Lordships answered, That they intended to proceed in his cause according to the right rules of justice; and should be glad if his Lordship should clear his honour therein; to which end they desired his Lordship to prepare for his just defence.

Then the Lords proceeded to examine the several complaints of the suitors, and reduced them to the following particulars.

That in the cause between Sir Rowland Egerton and Edward, his Lordship received on the part of Sir Rowland, before he declared for him.

* Duke of Buckingham.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Of Edward Egerton, in the same cause - - -	400	0	0
In the cause between Hody and Hody, a dozen of Buttons (after the cause ended) of the value of - - -	50	0	0
Of the Lady Wharton -	310	0	0
Of Sir Thomas Monk -	100	0	0
Of Sir John Trevor -	100	0	0
Of one Young -	100	0	0
In Fisher and Wraynham. Of Fisher -	106	0	0
In the cause of Kennedy and Valore. Of Kennedy, a cabinet worth -	800	0	0
Of Valore, borrowed at twice	2000	0	0
In the cause between Scot and Lenthall. Of Scot -	200	0	0
Of Lenthall -	100	0	0
In Wroth and Manwaring. Of Wroth -	100	0	0
Of Sir Ralph Hansby -	500	0	0
Of the Lord Montague, and more promised at the end of the cause -	700	0	0
Of one Dunch -	200	0	0
In Reynell and Peacock. Of Reynell, 200 <i>l.</i> in money, and a diamond, worth 5 or 600 <i>l.</i>	700	0	0
Of Peacock -	100	0	0
Of Barker -	700	0	0
There being a reference from his majesty to his Lordship of a business between the the Grocers and Apothecaries of the Grocers.	200	0	0
Of the Apothecaries (besides a rich present of amber-grease) - - -	150	0	0
Of the French merchants, to oblige the London Vintners to take 150 tons of Wine	1000	0	0

And lastly, that he had given way to great exactions by his servants, in respect of private seals, and sealing injunctions.

On the twenty-fourth of April, the Prince signified to their Lordships, that the Lord Chancellor had sent a submission, which was read in the house; wherein he tells their Lordships, that having understood the particulars of the charge, not formally from the house, but enough to inform his conscience and memory; he found matter sufficient and full, both to move him to desert his defence, and to move their Lordships to condemn and censure him.

Neither would he trouble their Lordships with singling out those particulars which might be most easily answered, or prompt their Lordships to observe upon the proofs, where they came not home; or with scruples touching the credit of the witnesses; nor would he observe how far a defence, in divers things, might extenuate the offence, in respect of the time or manner of the gift, but leave those things to their own observations on the evidence; and submitted himself to their pity and grace.

He made it his humble suit to their Lordships, that his penitent submission might be his sentence, and the loss of the seal his punishment; that their Lordships would spare any further sentence, and recommend him to his Majesty's grace and pardon for all that was past.

The Lords having considered this submission, and heard the particulars of the corruptions charged on the Lord Chancellor, with the proofs; they sent a copy of them, without the proofs, to the Lord Chancellor, and the following message, viz.

That his Lordship's confession, in the said submission, was not full for three causes.

1. His Lordship confessed not any particular bribe, or corruption.

2. Nor shewed how he heard the charge thereof.

3. The confession was afterwards exte-

nuated, and therefore the Lords had sent him a particular of the charge, and expected his answer to the same with all convenient expedition.

To this the Lord Chancellor answered, he would return the Lords an answer with speed.

On the twenty-fifth of April, the Lords sent the Lord Chancellor another message, by Mr. Baron Denham and Mr. Attorney-General, (viz.) That they had received a doubtful answer to their message, sent him the day before; and therefore desired to know, directly and presently, whether he would make his confession, or stand upon his defence.

To which the Lord Chancellor answered, by the same messengers, That he would make no manner of defence, but acknowledge corruption, and make a particular confession to every point, and after that an humble submission; but begged leave, where the charge was more full than the truth of the fact was, he might declare the truth in such particulars. And the Lords allowed him time till Monday the thirtieth of April, to send his confession and submission, the Lord Chancellor then sent it accordingly.

It was directed, "To the Right Honourable the Lords Spiritual and Temporal in the High Court of Parliament assembled;" and stiled, "The humble Confession and Submission of me, the Lord Chancellor."

1. To the first article he confessed, that upon a reference from his Majesty, of all suits between Sir Rowland Egerton and Edward Egerton, both parties submitted to his award, by reciprocal recognizances in ten thousand marks a piece; that, after divers hearings, he made his award, with the advice of Lord Hobart; and some days after, the 300l. mentioned in the charge, were delivered to him from Sir Rowland; that Mr. Edward Egerton flying off from the award, a suit was begun in Chancery by Sir Rowland Egerton, to have the award confirmed;

confirmed; and a decree was made thereupon.

2. To the second article, he confessed, that soon after his coming to the seal, when many presented him, he received the 400l. mentioned in this article, of Mr. Edward Egerton; but, as he remembered, it was for favours past.

3. That in the cause between Hody and Hody, about a fortnight after the cause was ended, there were gold buttons, about the value of 50l. presented him.

4. That in the cause between the Lady Wharton, and the coheirs of Sir Francis Willoughby, he received of the Lady Wharton 200l. in gold, and at another time an hundred pieces, while the cause was depending.

5. That he received of Sir Thomas Monk one hundred pieces, but it was long after his suit was ended.

6. That he received of Sir John Trevor, as a new-year's gift, 100l. but he confessed it was while his cause was depending.

7. In the cause between Holman and Young, he received of Young an 100l. but it was long after the cause was ended.

8. That while the cause was depending between Fisher and Wrenham (or Wraynham) he did receive of Sir Edward Fisher a suit of hangings, of the value of about 160l. towards furnishing his house; and was at the same time presented by others, who were no suitors, with furniture for his house:

9. As to the charge of his receiving a cabinet of the value of 800l. of Sir John Kennedy: a cabinet was indeed sent to his house by Sir John, but not of half that value; but he refused to accept it, and was determined to send it back again; that one Pinkney, who stood engaged for the money to pay for the cabinet, desired he might have it; and thereupon Sir John entreated his Lordship, that he would not disgrace him, by returning the gift, much less put it into a wrong hand; and that he was

ready to return it to whom their Lordships should appoint.

10. He confessed he had borrowed 2000l. of Vanlore; but looked upon it as a debt, and was obliged to repay it.

11. He acknowledged his receiving 200l. of Mr. Scott, about a fortnight after the decree passed for him.

12. That he received 100l. of Sir John Lenthall, about a month after the decree passed.

13. That the cause between Wroth and Manwaring was ended by his arbitrement, by consent of parties, and he received of Mr. Wroth 100l. about a month after the cause was ended.

14. That he received of Sir Ralph Hanby, while his cause was depending, 500l.

15. That he did borrow the 500l. mentioned in this Article of Compton, but looked upon it as a debt which he was obliged to repay.

16. In the cause between Sir William Brounker and Awbrey, he did acknowledge his receiving 100l. of Awbrey.

17. He confessed he received money of the Lord Montague, while his suit was depending to the amount of 6 or 700l.

18. He confessed his receiving 200l. of Mr. Dunch, but thought it was some time after the decree.

19. He confessed his receiving 200l. of Sir John Reynell, his near relation, at his first coming to the seal, to be bestowed in furniture; but thinks this was before any suit began; and as to the diamond ring he received of him, while his cause was depending, charged to be worth 5 or 600l. it was not of near that value, though he confessed it was too much for a new-year's gift.

20. He confessed his receiving of 100l. of Mr. Peacock, at his coming to the seal, as a present; and that he afterwards borrowed 1000l. of him, at twice; for which, he said, he would take no security or interest, and gave him his own time for repaying it.

21. He

21. He confessed his servant Hunt did receive 200l. of Smithwick; but that he ordered it to be repaid.

22. That he did receive of Sir Henry Rufwell, 3 or 400l. about a month after the cause was decreed; in which decree he was assisted by two of the Judges.

23. He confessed he received of Mr. Barker the 700l. mentioned in this article, some time after the decree passed.

As to the 24th, 25th, and 26th articles, he confessed he received the several sums therein mentioned, (viz.) Of the Grocers 200l. of the Apothecaries, that stood with the Grocers, a taster of gold, worth 4 or 500l. and a present of Ambergrease, and of a new company of Apothecaries, that stood against the Grocers, 100l. But this was no judicial business, he observed, only a composition between the parties; and he thought, as they all received benefit by it, and were all three common purses, there was no great matter in receiving what they voluntarily presented.

As to the 27th article in which he is charged with taking of the French merchants 1000l. to constrain the company of Vintners to take 1500 tons of their wine, with threatening and imprisoning the Vintners, because they would not take their wines at higher prices than they were vendible; he confessed, Sir Thomas Smith did deal with him in behalf of the French Company; informing him, that the Vintners, by combination, refused to take their wines at any reasonable prices; and that this would destroy their trade, which the state was concerned in; and that the company would gratify him with 1000l. for the trouble he should take in it. He did, he confessed, thereupon endeavour to compromise matters between them, and prevent a suit, propounding such a price as the Vintners might gain 6l. a ton; and the King afterwards recommending the business to him, as a matter that concerned his

customs, he dealt the more peremptorily in it, and did, for a day or two, restrain some of those that were most stiff in a messenger's hands; and afterwards the merchants presented him with 1000l.

To the 28th article, that he had given way to the exactions of his servants, in respect of private seals and injunctions, he confessed it to be a great fault, that he had looked no better to his servants.

And now he again confessed, That in the points charged upon him, though they should be taken as he had represented them, there was a great deal of corruption and neglect, for which he was heartily sorry, and submitted himself to the mercy of the court.

He desired that their Lordships would look with compassion on his person and estate, and consider he was never esteemed an avaricious man; that there were few or none of these particulars that were of less than two years standing; from whence he insinuated, that he had reformed these practices, instead of increasing his corruptions; and his estate was so inconsiderable, that his chief care was, how he should be able to pay his debts.

Concluding with his humble suit, that their sentence might be mixed with mercy; and that they would be intercessors for him to his Majesty for his grace and favour.

Signed, Your Lordships

Humble servant and supplicant,
FRANC. ST. ALBANS, CANG.

A committee of Lords was hereupon sent to the Lord Chancellor, to acquaint him that they conceived this to be an ingenuous and full confession, and to demand whether that was his hand to it, and if he would abide by it. To whom the Lord Chancellor answered, "My Lords, it is my act, my hand, my heart: I beseech your Lordships to be merciful to a broken reed.

Which

Which answer being reported to the house, they moved his Majesty to sequester the seal; and the King thereupon gave it to the Lord Chief Justice Sir Robert Hurton, on the first of May.

The next day the Lords commanded the Gentleman-Usher and Serjeant at Arms, of that house, to summon the late Lord Chancellor to appear in person before their Lordships by nine the next morning; and that the Serjeant should shew his mace to his Lordship at the time of the summons; which was done accordingly; but they found him sick in bed; and he protested his illness was not feigned, and that if he had been well, he would willingly have come.

On Thursday, the third of May, the Lords sent a message to the Commons, importing, that they were ready to give judgment against the Lord Viscount St. Albans; whereupon the commons came up; and their Speaker said, "The Knights, Citizens, and Burgeſſes of the Commons house having made complaint to your Lordships of many exorbitant offences of bribery and corruption committed by the late Lord Chancellor, in their name I do humbly pray and demand judgment against him, as the nature of his offence and demerits do require."

The Lord Chief Justice (to whom the custody of the seal was now committed) answered, That that high court had found the Lord Viscount St. Albans guilty of the crimes and corruptions complained of by

the Commons, and of sundry other crimes and corruptions of the like nature; and that, he having excused his attendance on account of sickness, they did nevertheless proceed to judgment; and that high court did adjudge, "That the Lord Viscount St. Albans, late Lord Chancellor of England, should pay a fine of forty thousand pounds; be imprisoned in the Tower during the King's pleasure, and be for ever incapable of any office, place, or employment, in the estate of commonwealth; and that he should never sit in parliament, or come within the verge of the court."

The King some time after released his Lordship out of the Tower, and settled a small pension on him; and he resided, for the most part, at his chambers in Gray's Inn. He died the 6th of April 1626, in the sixty-sixth year of his age, at the Lord Arundel's house at Highgate, near London; where he had been about a week upon a visit. His distemper was a slow fever, attended by a violent cold, and a defluxion of rheum upon his breast, which was so great that it suffocated him.

He was buried at St. Michael's church in St. Alban's, in pursuance of his will, and had a monument of white marble erected there, by Sir Thomas Meautys, once his Lordship's Secretary; the inscription being composed by the celebrated Sir Henry Wotton. He left neither wife nor child, and consequently his titles of Lord Verulam, and Viscount of St. Alban's, expired with him.

Trial of MERVIN, LORD AUDLEY, EARL of CASTLEHAVEN, for a RAPE and S—y, before the Lord Keeper COVENTRY, Lord High Steward, and the rest of the Peers commissioned to try him, April 25, 1631.

THREE indictments had been found against this Lord by the Grand Jury at the preceding Lent assizes for Wiltshire. The first for a Rape on his own Wife, whom he held by force, while one of his servants lay with her; and the other two indictments were for S—y.

Before the trial the Judges came to the following resolutions on certain queries sent them by the Lord High Steward.

1. That a peer could not be tried by a common jury; but must be tried by his peers.

2. That a peer could not challenge any of his peers.

3. That a peer could not have counsel, but on points of law.

4. That his own examinations taken without oath, might be read against him; but the examinations of others must be upon oath.

5. That the wife, in case of a rape, being the party wronged, may be evidence against her husband.

6. That where one stood mute in a rape he might have his clergy; but not in a b—y.

7. That to denominate the offence a rape, there must be an entry.

8. That the Lord's Triers might eat and drink before they agreed; but could not separate, or adjourn, till they gave their verdict.

9. That a peer could not be convicted by less than twelve peers.

10. That if a prisoner stood mute in an appeal, he must be hanged; for that it was an attainder.

11. That a peer standing mute in an indictment, might be pressed to death.

12. That the Lord High Steward, after a verdict, might take time to advise upon a point of law; and his office continued till judgment given.

It was resolved also, That if a woman was a whore, she might however be ravished; but it was a good plea for the man, that she was his concubine. And that, if a man took a maid by force, and ravished her, and she afterwards gave her consent, and married him, this would not purge the offence, but it was still a rape.

The said several indictments being certified, and brought into court, and the prisoner commanded to the bar, the evidence was produced: And first, the examination of the Lady Audley, as to the rape, who deposed, that her Lord (the prisoner) called his servant Broadway into his bed while she was asleep; that she waked, and made all the resistance she could; but his Lordship held both her hands, and one of her legs, till Broadway lay with her; that as soon as she got from him, she would have killed herself with a knife, and that Broadway forced it from her. Broadway's examination also was read, who confessed, that his Lordship called him into his bed, and bid him lie with his Lady; and, that he did lie with her, whilst his Lord held one of her legs, and both her hands.

As to the f—y, Broadway deposed, That the Earl used his body as the body of a woman.

Fitz-Patrick, another servant, deposed, That his Lord had twice committed f—y with

with him (the deponent); that Henry Skipwith, another servant, had lain with the Lady Audley, by his Lord's command, and in his presence; but the Lady, in her examination, says, she cried out, and that Skipwith did not lie with her.

The Lady Audley also deposed, That the first or second night after she was married, her Lord called Amphill (who had been his page, and to whom he had married his daughter) to his bedside, and said, now her body was his, and if she loved him, she must love Amphill; that he made Skipwith come naked into his chamber, and delighted to call in his men-servants to see them.

Skipwith also deposed, That his Lord made him lie with the young Lady Audley, his son's wife, who was then but twelve years of age; that he could not enter her at first, and the Lord Audley used many indecent practices to overcome her, by which means he at last accomplished his design.

The young Lady also deposed, That the Lord Audley saw Skipwith lie with her several times; and, that nine servants of the family also had seen it; that she had no other maintenance than what she had from Skipwith; and that, among other arguments, the prisoner used to make her lie with Skipwith, he told her her husband did not love her, and threatened to turn her out of doors, if she would not, adding, that he would tell her husband she did, if she did not; and confirmed the circumstance of their indecent practices.

Fitz-Patrick also deposed, That his Lordship kept a whore in the house, and, that he made four or five of his servants lie with her in his presence; and his Lordship lay with her in their sight.

The Judges opinion being demantled on some parts of the evidence, resolved, That it was *felony* within the statute, and it ought to be adjudged a rape; for that in a

rape a woman is not limited to any time to make her complaint, if the process be by indictment; but in an appeal she is.

The Lord Audley, in his defence, said, That his wife's testimony ought not to be regarded, since she had confessed her lying with Broadway. To which it was answered, he could not urge that fact in his defence, since he had forced her to suffer it. Then he said, that his wife and his servants were not competent witnesses, and that they were put upon practising against him by his son, who sought his life; adding, that his wife had been false to his bed, and had a child in his absence; and then made protestations of his innocence. But woe to that man (he said) whose wife and servants should be admitted witnesses against him, and whose son conspired his death! His son was now come of age, and wanted his lands; and his wife a young husband, now he was grown old, and had therefore plotted his destruction.

The Lords Triers having been withdrawn some time, returned, and were unanimous in their opinion, that the prisoner was *Gilty* of the Rape; but as to the *S—y*, eleven of his peers were of opinion, that he was *Not Gilty*, and sixteen declared him *Gilty*.

Judgment was afterwards passed upon the prisoner, that he should be hanged; however, he obtained the favour of being beheaded; when he professed himself perfectly innocent of the crimes he was charged with.

Trial of L. FITZ-PATRICK and T. BROADWAY, two servants of the before-mentioned Lord Audley.

On Monday the 27th of June, 1631, the Marshal of the King's Bench brought Fitz-Patrick and Broadway to the bar, where

where was a jury of sufficient and able men impannelled to try them.

The Countess of Castlehaven herself was in court to give evidence against Broadway; and she came in upon the instant; when the Lord Chief Justice demanded of her, whether the evidence she had formerly given at her Lord's arraignment was true, and the full matter of charge she had then to deliver against the prisoner? whereunto she answered, it was. My Lord said, "Madam, you have sworn that Broadway, prisoner at the bar, hath laid with you, by force, which may be, and yet no act committed."

She said, that in her former oath taken, when she testified he lay with her by force, her meaning was, that he had known her carnally.

Then she was told to look on the prisoner, unto which motion and commandment she made a short reply, that although she could not look on him but with a kind of indignation, and with shame, in regard of that which had been offered unto her, and she suffered by him, yet she had so much charity in her, and such respect for God and his truth, that she had delivered nothing from malice, and therefore hoped that her oath and evidence thereon should be credited; and so desired to be believed and dismissed; which being granted, she departed with as much privacy as might be into her coach.

Fitz-Patrick being asked concerning his guiltiness or innocence, demanded to know who were his accusers? The Lord Chief Justice answered, you have accused yourself sufficiently. Fitz-Patrick replied, that he thought neither the laws of the kingdom required, nor was he bound to be the destruction of himself; what evidence he had formerly given was for the King against the Earl, and no farther. The Lord Chief Justice replied, it was true the law did not oblige any man to be his own accuser; yet where his testimony served to take away any one's life, and made himself guilty of the same crime, therein it should serve to cut him off also. Then the jury demanded of the court satisfaction concerning the words of the statute, which run, "To charge him alone to be, and accounted a felon in law, that committed a b——y with man or beast." (for which fact the late Earl was only guilty, and had suffered). The Lord Chief Justice replied, "That, for as much as every accessory to a felon is a felon in law; so he being a voluntary prostitute when he was not only of understanding and years to know the heinousness of the sin, but also of strength to have withstood his Lord, he therefore was so far forth guilty."

Whereupon the jury found the bill, and sentence of death was passed on them both accordingly; after which they were committed to Newgate, and behaved religiously till the day of their execution.

The Trial of THOMAS, EARL of STAFFORD; on an Impeachment of the House of Commons, for HIGH TREASON, November 11, 1640.

THE Parliament, which began the Grand Rebellion against King Charles the first, meeting on the 3d of November,

1640. Mr. Pym, one of the chief of the faction in the House of Commons, moved on the eleventh of the same month, That the

the doors might immediately be locked up, for he had matters of importance, he told them, to communicate to the House; which being agreed to, he made a most virulent speech against the Earl of Strafford; declaring, he was the greatest enemy to their liberties, and the greatest promoter of tyranny and arbitrary power, that any age had produced; and being seconded by some gentlemen of the same party, it was resolved to impeach the Earl forthwith of high treason: And Mr. Pym was ordered to go himself to the Lords, and impeach him at their bar; and to require he might be sequestered from the House, and committed to safe custody; which Mr. Pym with great alacrity executed, as soon as he received his orders; and the Earl of Stafford being then in the House of Peers, some Lords cry'd out with unusual clamour, that the Earl should withdraw; in-somuch that it was with difficulty he obtained leave to be heard first in his place.

In his speech on this occasion, he declared his innocence; and desired he might not be restrained of his liberty upon a general charge, before any one article was exhibited against him: However, they resolved, after a very short debate, that he would be committed to the Black-Rod: Then the Commons made an order, that none of their House should visit the Earl, in which they were imitated by the Peers: The Lords also, at the desire of the Commons, appointed a committee, to take the depositions of the witnesses against the Earl of Stafford, in the presence of another committee of the Lower-House; and it was agreed, that such Peers as were witnesses, should be upon their oaths, that privy-councillors might give evidence against him; and, that the examinations should be kept private, till the Commons thought fit to make use of them; and on the 25th of November, Mr. Pym carried up nine ar-

ticles against the Earl of the following tenor, (viz.)

1. That he the said Thomas Earl of Stafford, hath traiterously endeavoured to subvert the fundamental laws and government of the realms of England and Ireland, and instead thereof to introduce an arbitrary and tyrannical government against law, which he hath declared by traiterous words, councils and actions, and by giving his Majesty advice by force of arms to compel his loyal subjects thereto.

2. That he had assumed regal power, to the undoing of many.

3. That he had converted great part of his Majesty's treasure and revenues to his own use.

4. That he hath traiterously abused the power and authority of his government to the encreasing, countenancing, and encouraging of Papists, that by their help he might accomplish his malicious and tyrannical designs.

5. That he hath maliciously endeavoured to stir up enmity and hostility between his Majesty's subjects of England, and those of Scotland.

6. That, being Lieutenant-General of his Majesty's armies, he had betrayed his Majesty's subjects to death, and his army to a shameful defeat at Newborne by the Scots, and suffered New-Castle to fall into their hands, to the end England might be engaged in an irreconcilable quarrel with the Scots.

7. That he endeavoured to incense his Majesty against Parliaments, thereby to create divisions between him and his people, and destroy these kingdoms; for which they impeached him of High Treason.

8. That he committed these acts while he was Lord Deputy of Ireland, Lieutenant-General of the armies of England and Ireland, Lord President, and Lieutenant-General of the North.

9. The Commons, saving to themselves the

the liberty of exhibiting any other accusation, prayed, that the Earl might be brought to justice, &c.

These general articles seem to be sent up with no other view, than that they might have a pretence for his being committed to the Tower, while they should hammer out more particular articles, and fish for witnesses to support their charge; for on the 30th of January 1640, they sent up twenty-eight special articles against him, in which the former seem to be comprehended.

1. They charge, That the Earl, being President of the North, did on the 21st of March, 8 Car. procure a commission, with instructions, directed to himself and others, empowering them to determine all misdemeanours and offences in the North; and particularly, they were appointed to proceed according to the course of the Star-Chamber against divers offences; and to proceed according to the course of the Court of Chancery concerning lands, and grant injunctions to the Common Law Courts: And that he exercised those powers over the persons and estates of several, deprived them of their estates and possessions, and fined and imprisoned them, to their utter ruin; and particularly Sir Conyers Darcy and Sir John Bouchier: That he procured directions, that no prohibition should be granted; and that none should be discharged on a Habeas Corpus, till they had performed their decrees; and that in the 13th of the King, he caused the commission to be renewed, with additional instructions.

2. That, soon after his procuring the first commission, he declared at the assizes at York, that since some of the justices of peace were all for law, they should find the King's little finger heavier than the loins of the law, in order to terrify the said justices, that they should not execute the laws.

3. That, in a speech to the nobility of

Ireland, and the corporation of Dublin, the Earl declared Ireland was a conquered kingdom; that the king might do what he pleased with them; their charters were worth nothing, and bound the King no farther than he pleased.

4. That Richard Earl of Cork having commenced a suit for the recovery of his possessions, of which he was dispossessed by an order of Council, the Earl threatened to imprison him, if he did not surcease his suit; and said he would have neither the law nor lawyers dispute his orders; adding, That he would make the Earl of Cork and all Ireland know, that as long as he had the government, an act of state should be as binding to that kingdom as an act of parliament.

5. And that he did accordingly exercise his power on the goods, inheritances, liberties, and lives of the subjects there, to the subversion of the laws of that kingdom; particularly, that he did, in time of full peace, cause the Lord Mountnorris to be condemned to death by a council of war; and caused sentence of death to be pronounced against another person (whose name was unknown) at Dublin, and he was executed in pursuance of it.

6. That, on a paper petition, he caused the said Lord Mountnorris to be disseized of his manor of Tymore.

7. That he caused the case of tenures on defective titles to be drawn up; procuring the resolutions of the judges thereupon; by colour of which he caused the Lord Thomas Dillon and divers others, to be dispossessed of their freeholds, to the ruin of many hundred families.

8. That on the petition of Sir John Gifford, he made an order against Adam Viscount Loftus, Lord Chancellor of Ireland, and, under pretence of disobedience to the said order, caused him to be imprisoned, and to surrender the Great Seal: That he imprisoned the Earl of Kildare, in order to make

make him submit his title to the manor of Castle-Leigh to his pleasure, and kept him in prison a year, refusing to enlarge him, though directed to do it by his Majesty's letters: That he caused an order of council to be entered against Dame Mary Hibbotts, although a major part of the council was for the Lady; and forced her to relinquish her estate; which was soon after conveyed to Sir Robert Meredith, to the use of the Earl of Stafford; and that he imprisoned several others, on pretence of disobedience to his orders, for pretended debts, titles to lands, &c. in an arbitrary extrajudicial course, upon paper petitions.

9. That he granted a commission to several bishops, their respective chancellors and officers, to commit the meaner sort of people to prison, who should not obey their decrees.

10. That he farmed the customs of Ireland, and, to advance his gain, caused the native commodities to be over-rated; and the customs, which formerly were but a twentieth part of the value of the goods, were now a fourth, a fifth, and some of them a third part of the value.

11. That he extorted great sums from the subject, for licences to export divers sorts of goods.

12. That he issued a proclamation against the importation of tobacco, and then caused great quantities to be imported for his own use; and would not permit the merchants to vend their tobacco, unless they would let him have it at his own price: That he issued another proclamation, commanding all tobacco to be seized that was not sealed by his agents; and those on whom unsealed tobacco was found, were fined, whipped, imprisoned, or pilloried; by which means he gained an hundred thousand pounds; and though he raised the customs in other articles, he lessened them in this, from six-pence to three-pence a pound, for his own profit; and that, by the like undue

means, he constituted divers others monopolies.

13. That he commanded the Irish, by proclamation, to work their flax and yarn into thread, in a manner they were unskilled in, and seized the flax that was otherwise wrought; whereby he gained the sole sale of that native commodity.

14. That he imposed an unlawful oath on the owners and masters of ships, by proclamation, requiring them to give an account of their lading, their owners, from whence they came, and whither bound.

15. That, contriving to bring the realm of Ireland under his tyranny, he imposed great sums on the town of Baltimore, and divers other places, which he levied by troops of soldiers: That particularly he impowered Robert Savile, serjeant at arms, and several captains, to quarter soldiers on such of the inhabitants as would not be conformable to his orders: That he dispossessed Richard Butler, and above an hundred families, of their estates by a military force, imprisoning the proprietors, till he compelled them to relinquish their respective interests, levying war against his Majesty, and his liege people of that kingdom.

16. That, to continue his oppressions on the subjects of Ireland, he prevailed on his Majesty, not to suffer any complaints to be received in England; and issued a proclamation, prohibiting all, who had any estates or offices in Ireland, to depart the kingdom without license; and imprisoned several that came over to England to complain against him.

17. That he affirmed, his Majesty was so well pleased with his army in Ireland, and the consequences it produced, that he would make it a pattern for all his three kingdoms.

18. That, in order to make the Papists of England and Ireland to depend on him, he restored several religious houses to their pretended owners; particularly two in Dublin.

lin, which had been assigned to the university there, which were now employed in the exercise of the Popish religion. That he raised an army, of which seven thousand were Papists; and that, to engage this new army to him, he paid them duely, and permitted them to exercise their religion; whereas the old army were kept without their pay for a whole year: And, that being a commissioner for compounding forfeitures for recusancy, in the Northern counties of England, he compounded with the recusants there at very low rates, and discharged them from all process, in order to engage them to him.

19. That he imposed an oath on the subjects of Ireland, requiring them to swear, that they would not protest against any of his Majesty's commands, but submit obediently to them, fining, imprisoning, and banishing the refusers; and particularly, that he fined Henry Steward and his wife 5000 l. a-piece, and imprisoned them for non-payment: That he declared the said oath did not only oblige them in point of allegiance, but to the ceremonies and government of the church established, or to be established by his Majesty; and gave out that those who refused to take it, he would prosecute to blood.

20. That he endeavoured to create in his Majesty an ill opinion of the Scots, and excited him to an offensive war against them, since the pacification: That he was the chief incendiary, declaring that the Scots demands in parliament were a sufficient cause to make war upon them; that they were rebels and traitors; and, if his Majesty pleased, he would root them out of Ireland, except they took the oath in the preceding article; and that he caused several Scottish ships to be seized, to engage the kingdoms in war.

21. That, having incited his Majesty to carry on an offensive war against Scotland, he advised him to call a parliament, but

that if they did not occur in the Earl's mischievous projects, they should be dissolved, and money raised on the subjects by force; declaring in council, That he would serve his Majesty any other way, in case the parliament did not supply him.

22. That he procured the parliament of Ireland to declare they would assist the King against the Scots; and conspired with Sir George Ratcliffe to employ the army of Irish Papists he had raised, to the subversion of the government of England; declaring that, if the parliament would not supply his Majesty, he was at liberty to use his prerogative for what he needed; and that he would be acquitted both by God and man for so doing.

23. That, the last parliament taking the grievances of the kingdom into consideration, the Earl and Archbishop Laud advised his Majesty, by several speeches and messages, to urge the Commons to grant a supply for the war against Scotland, before they entered on their grievances: And that a demand being made by his Majesty of twelve subsidies, in lieu of ship-money; while the commons were debating on the supply, the said Earl and the Archbishop moved his Majesty to dissolve that parliament, and the Earl then incensed his Majesty against the members, telling him, "they had denied to supply him, and that his Majesty having tried the affections of his people, and been refused, he was absolved from all rules of government, and that he had an army in Ireland, which he might employ to reduce this kingdom."

24. That he falsely declared to others of the privy-council, that the parliament having forsaken the King, and denied him a supply, they had given him an advantage to supply himself by such other ways as he saw fit; and that he was not to suffer himself to be mastered by the frowardness of his people. And that the Earl, the Archbishop, and the Lord-Keeper Finch, published

lished a scandalous book in his Majesty's name, entitled, "The causes that moved his Majesty to dissolve the last parliament," full of bitter invectives against the Commons.

25. That he advised the levying of ship-money, and procured the Sheriffs to be prosecuted for not levying it, and several to be imprisoned for not paying it; and advised, that the Lord-Mayor of London, the Aldermen, &c. should be summoned before the council, to give an account of their proceedings in levying ship-money, and concerning the loan of an hundred thousand pounds demanded of them by the King; and on their refusing to certify who were fit to lend, the Earl said, they deserved to be fined; there was no good to be done with them till they were laid by the heels, and some of the Aldermen hanged up.

26. That he caused 130,000*l.* belonging to his Majesty's subjects and foreigners, to be seized in the Mint; and when it was represented what a prejudice this would be to the kingdom, said, that the city had dealt undutifully, and were readier to help the rebels than his Majesty; and that it was the practice of other Princes to use such money to serve their occasions; that the French King used to send commissaries of horse to take account of men's estates, and levy money on them by force; and, directing his discourse to the Lord Cottington, said, this was a course worthy to be considered by his Lordship.

27. That, being Lieutenant-General in the north, he imposed a tax of eight-pence a day for every soldier of the militia in that county, and levied it by force, declaring, that those who refused it, were guilty of little less than high-treason.

28. That, receiving advice of the Scottish army's bending its march towards England, he did not provide for the defence of Newcastle, but suffered it to fall into their hands, to incense the English

against the Scots; and in order to engage the two nations in a bloody war, he ordered the Lord Conway to fight the Scots at the passage of the Tine; though he had represented, he had not force sufficient to encounter them; whereby he betrayed his Majesty's army to apparent danger and loss: all which the Earl had done, with an intent to create a division between his Majesty and his people, and to destroy him and his kingdoms; and for which they impeached him of high-treason.

The Earl's Answer to the said twenty-eight articles was in substance as follow:

1. To the first, the Earl answered, That the commission directed to him and others, to hear and determine offences in the north, did not differ from former commissions: that he believed Sir Conyers Darcy and Sir John Bouchier were legally fined; but he was then in Ireland; and denies that he did any thing, but what he might legally do, by virtue of that commission.

2. He denies he spoke the words charged in the second articles, but had said, "the little finger of the law was heavier than the King's loins."

3. He denies the words charged in this article, but might say, the charters of Dublin did not bind his Majesty.

4. That the proceedings at the council-table of Ireland have ever been by petitions, answers, &c. and they have always punished contempts to their orders by fine and imprisonment; and believes he might tell the Earl of Cork he would imprison him, if he disobeyed the orders of the council-table.

5. That the Deputies and Generals of the army have always executed martial law in Ireland; and the army there was governed by printed orders; and the Lord Mountnorris being a Captain in the army, was sentenced to death by a council of war, consisting

consisting of twenty officers, for mutinous words, and breach of orders; in which the Earl was no Judge, but afterwards procured his pardon; and Lord Mountnorris suffered no personal damage, unless two days imprisonment.

6. To the sixth he saith, That calling the Lord Chancellor and the Master of the Rolls to his assistance, upon hearing the cause mentioned in this article, a decree was made for the plaintiff; and the Lord Mountnorris might thereupon be put out of possession.

7. To the seventh, That the Lord Dillon consented to the stating of the case mentioned in this article, and the Judges delivered their opinions thereupon; but that neither he, nor any one, were bound thereby, or put out of possession.

8. He says that a decree was made by the Privy-council of Ireland against the Lord Loftus; and, on an appeal to the King and Privy-council of England, that decree was confirmed; and for disobedience to that decree, and continuance of his contempt, he was committed close prisoner, and the great seal delivered up by his Majesty's command. And that an information being exhibited against the Lord Loftus, in the Star-Chamber, for his oppressions, as Chancellor, he submitted, desiring he might be an object of his Majesty's mercy. That the Earl of Kildare was committed for not performing an award, made by King James, and an award in pursuance thereof by the Earl of Strafford; and a letter being unduely obtained, he was not discharged thereupon; but upon another letter, and making a submission, he was enlarged. That the Lady Hibbotts, and Hoydetson, having made a fraudulent bargain with the petitioner Hibbotts, for lands of great value, was ordered by the council to deliver up the writings, no assurances being made, or money paid; and believes she might be threatened to be

committed, if she disobeyed that order but denies the lands were conveyed to Sir Robert Meredith for his use; or that any one had been imprisoned by an order made by himself, in a case of freehold; though he admits they may have been for debts and personal things, as had been practised by his predecessors.

9. That such warrants, or commissions, as are mentioned in this article, have been granted to Bishops by his predecessors; but that he never granted more than one, and finding it complained of, had recalled it.

10. To the tenth he saith, That the Lord Treasurer Portland offered the farm of the customs for 13000l. per annum, and to the Earl had advanced them to 15500l. per annum, besides 8000l. fine; that, by his Majesty's command, he became a farmer at those rates, without addition; that he dissuaded the advancement of the rates, and it was declined; that the rates of hides and wool were moderate, and the trade of shipping mightily encreased in his time.

11. To the eleventh, That his Majesty, to restrain the destruction of timber, had laid a duty of thirty shillings, and afterwards of three pounds, per thousand upon pipe-staves exported; which was paid to the King's use, but the Earl had lost 4 or 5000l. per annum, by it, which was paid to his predecessors, for licence to export them.

12. To the twelfth he saith, That the revenue of Ireland falling short of the expences of the government, 24000l. per annum, the Commons petitioned the duties on tobacco might be applied to the encrease of the revenue, which was consented to; that the Earl had lent money to forward the business, and, by his Majesty's allowance, was a partner, but had yet made no advantage thereby; and knew no whipping, or other punishment, for non-payment

ment of the duties; that the farms of the customs were advanced 2000l. per annum, and five eights. That the price of tobacco was two shillings and four-pence per pound; and he had not raised it, or countenanced any monopoly.

13. To this article, he saith, That he chose to advance the linen manufacture there, rather than the woollen, because the latter might prejudice England; that he imported great quantities of flax, and sold it without any profit, to encourage the natives, the soil being proper for it; that he had set up abundance of looms, and sold a great deal of cloth to loss; but, when they would not be brought to change the old way of working their flax for a better, that manufacture declined.

14. That the proclamation mentioned in this article, was set forth by the council of state, to prevent frauds in the King's duties; and the oath enjoined, was approved by the Judges.

15. That the Irish agents in the time of his predecessors, had agreed to pay 120,000l. towards the maintenance of the army, and that the money should be levied by Captains, by paper assignments, upon warrants from the said deputy; but this was continued only part of a year in his time, and he was confident no force was used in levying it; and that neither Richard Butler, or any other family, were evicted from their estates.

16. To the sixteenth, he says, That, by the laws of Ireland, none can depart that kingdom without licence; however, he had denied his licence but to three, and that upon very good reasons.

17. To the seventeenth, That he might say to the soldiers of the old Irish army, that the King was so well pleased with the exercise of their arms, that he would make them a pattern for others to imitate.

18. To the eighteenth, That when the Earl of Cork was one of the Lords Justices,

he seized some houses in Dublin, on pretence of their belonging to jesuits and friars, without legal process; and that suits being commenced for them at the council-board, they were restored to the owners; but how they had been employed since, the Earl knew not; that he left the care of raising the 8000 men mentioned in that article, to the Earl of Ormond, and believed they could not be raised without many papists among them, though most of the officers were protestants; and in the old army he never made one officer that was not a protestant; and gave directions, that the common soldiers should be all such, and he believes they have been duly paid. And the new raised men exercised their religion in no other manner than was practised in the times of his predecessors; that in his compositions with the recusants in the north of England, he brought their forfeitures from 23000l. to 12000l. per annum within four years; and that they had no other privileges than what they had formerly.

19. To the nineteenth, he saith, he admits that an oath was tendered to the Scots in Ulster, who were near an hundred thousand men, it being suspected they would join their brethren the covenanters; and that it was taken by all of that nation in Ireland, some few excepted, who were censured for their refusal; but that there was nothing in it relating to the government of the church.

20. To the twentieth, he saith, he acknowledges he thought it convenient an army should be raised against the covenanters, but advised the consulting the parliament in it; that the Scots demands being considered by the council, before the parliament met, it was unanimously agreed, That they were such as might not in honour, or safety be granted; and that, if they could not be reduced otherwise, his Majesty might do it by force; and his Majesty

jeſty was adviſed to borrow 200,000l. till the Parliament ſat; and he might ſay, that thoſe who raiſed forces in that kingdom, were no better than traitors and rebels; and that he ſeized ſeveral Scots ſhips by warrant from the Lord Admiral, in order to bring them to terms of accommodation.

21. To the twenty-fiſt, that the pacification was broken before he came into England; and that he moved for the calling a parliament, in order to procure a good underſtanding between the King and his people, and not with the intent this article ſuggeſts; and he might ſay, if the parliament reſuſed a ſupply, he would ſerve his Maſteſty in any other lawful way.

22. He denies the words charged in this article; but ſays, he did repreſent the ſtate of his Maſteſty's affairs to the parliament of Ireland, and they readily gave him four ſubſidies; that he alſo raiſed eight thouſand men, by his Maſteſty's orders, who were ſent to ſecure Ulſter, or land in Scotland, to divert the Earl of Argyll, in caſe he declared for the covenanters.

23. To this article he ſaith, He admits, that it being debated in council, what might move the parliament to grant a ſupply, he did adviſe, that his Maſteſty ſhould lay down ſhip-money, and promiſe never to demand it again, and to redreſs their other grievances; and that he adviſed his Maſteſty to accept eight ſubſidies; that the Earl drew up a meſſage of this tenor in writing, and it was given to Sir Henry Vane, to deliver to the houſe of Commons, but he did not know whether Sir Henry delivered it or not; but that, the houſe having debated the ſupply two days, and come to no reſolution, his Maſteſty called a council the 5th of May; to which the Earl coming in late, was informed the King declared his reſolution of diſſolving the parliament; and Sir Henry Vane declaring there was no hopes the parliament would give the King a penny, the Earl

ſuppoſing the aboveſaid meſſage had been delivered to the Commons, did, in his turn, give his vote for diſſolving the parliament; as Sir Henry Vane, and the reſt of the Lords of the council, had done, to the number of twenty (two or three excepted); that the parliament being diſſolved, and the King demanding of the council how money might be raiſed, now the Scots were upon the point of entering the kingdom, the Earl declared, he was of opinion, "That in a caſe of abſolute neceſſity, his Maſteſty was abſolved from ordinary rules, and might uſe all moderate ways and means for the defence of himſelf and the kingdom;" for he conceived, in ſuch extremity, *Salus populi was Suprema lex*; that he gave his opinion, as he was bound to do by his oath of a Privy counſellor, and not officiouſly; neither did he ſpeak the words mentioned in this article, or any other to that effect.

24. To the twenty-fourth, he ſaith, He gave his opinion with the reſtrictions mentioned in the laſt article; that he had no ill intentions towards the parliament, or knew of the publiſhing the book mentioned in this article.

25. To the twenty-fiſth, That ſhip-money was adjudged and levied before his coming to England; nor did he promote the proſecuting the reſuſers in the Star-Chamber; that he had ſaid at the council-board, that the Sheriffs ought to be fined for not executing the King's writs; which was done with an intention to quicken them, and not with a deſign they ſhould be proſecuted: and denies the reſt of the words mentioned in this article.

26. To the twenty-fixth, he ſaith, He adviſed neither of the projects mentioned in this article. That the merchants deſiring him to move his Maſteſty to releaſe the bullion, he reſuſed to meddle with it; telling them, they might thank themſelves, if, by denying the King the loan of a
100,000l.

100,000*l.* in that time of danger, they had compelled him to seize the bullion; and that the Earl of Leicester observing, that commissioners were appointed to inspect the merchants, shop-books at Paris, and tax every man according to his ability, he did say, They might bless God they were not subject to such a king in England: but denies speaking the words specified in this article, expressing his concern, that his words should constantly be misrepresented.

27. To this article he says, That the gentry of Yorkshire agreed to allow the trained bands a month's pay; and it was ordered, by his Majesty and the great council of Peers, when any of those regiments were permitted to return home, they that sent them out should contribute to the charge of the rest; and this was levied by warrants from the Earl and his deputy-lieutenants, and lessened the charge of the county: And denied the rest of the charge in this article.

28. To the last article, he answered, That he was lieutenant-general to the Earl of Northumberland, and that the Lord Conway having twelve thousand foot and two thousand horse under his command, near Newcastle, and his Majesty having given orders for opposing the passage of the Scots over the Tine, the Earl sent the Lord Conway a letter from York the 27th of August, advising him to march with eight thousand foot, and all his horse and artillery, and defend that passage; but before the Lord Conway had received that letter, he had placed himself there with only fifteen hundred foot and part of the horse: That the Earl had no charge of the army, till the 30th of August, when he brought it to York, and designed to have remained there with the army, had he not received advice from several hands, that there was a design to prosecute him in parliament, which induced him to leave the army under the Lord Conway, and come to London; adding, that Newcastle was not under his

care: And as to the rest of the matters contained in the said articles, he was not guilty; praying he might have time to produce his proofs and vouchers in his defence.

The place appointed for the tryal was the great hall in Westminster, where there was a throne erected for the King, on each side thereof a cabinet enclosed about with boards, and before with a tarras. Before that, were the seats for the Lords of the Upper House, and sacks of wool for the Judges; before them, ten stages of seats, extending farther than the midst of the Hall, for the gentlemen of the House of Commons: at the end of all was a desk closed about, and set apart for the Lord Lieutenant and his counsel.

Monday Morning about seven of the clock he came from the Tower, accompanied with six barges, wherein were one hundred soldiers of the Tower, all with partizans, for his guard, and fifty pair of oars. At his landing at Westminster, there he was attended with two hundred of the trained bands; and went in, guarded by them into the Hall. The entries at White-hall, King-street, and Westminster, were guarded by the constable and watchmen, from four of the clock in the morning, to keep away all base and idle persons.

The King, Queen, and Prince, came to the House about nine of the clock, but kept themselves private within their closets, only the Prince came out once or twice to the cloth of State; so that the King saw and heard all that passed, but was seen of none. Some give the reason of this, from the received practice of England in such cases: Others say, that the Lords did intreat the King either to be absent, or to be there privately, lest pretensions might be made hereafter, that his being there was either to threaten, or some otherwise to interrupt the course of justice: A third sort that the King was not willing to be accessary to the process till it came to his part, but

but rather chose to be present, that he might note and understand what violence, rigour, or injustice happened.

When the Lieutenant entered the Hall, the porter of the Hall (whose office it is) asked Mr. Maxwell, whether the ax should be carried before him, or no? who did answer, That the King had expressly forbidden it; nor was it the custom of England to use that ceremony, but only when the party accused was to be put upon his jury. Those of the Upper House did sit with their heads covered, those of the Lower House uncovered. The Bishops upon the Saturday before did voluntarily decline the giving of their suffrages in matters criminal, and of that nature, according to the provision of the canon law, and practice of the kingdom to this day, and therefore would not be present: yet withal they gave in a protestation, that their absence should not prejudice them of that or any other privilege competent to them, as the Lords spiritual in Parliament, which was accepted.

The Earl of Arundel, as Lord High Steward of England, sat apart by himself, and at the Lieutenant's entry commanded the House to proceed, Mr. Pym being speaker of the committee for his accusation, gave in the same articles which were presented at his last hearing before the Upper House, which being read, his supplies were subjoined and read also; the very same which were presented before in the Upper House. Some give the reason of this, because the Lower House had not heard those accusations in public before; others, that the formality of the process required no less; however, that day was spent in that exercise.

The Queen went from the House about eleven of the clock, the King and Prince staid till the meeting was dissolved, which was after two. The Lieutenant was sent to the tower by his guard, and appointed to return upon Tuesday at nine of the clock in the morning. The croud of people was

neither great nor troublesome; all of them saluted him, and he them, with great humility and courtesy, both at his entrance and at his return; therefore let some pretend what it please about the malice and discontent of the multitude, "That if he pass the stroke of justice, they will tear him in pieces;" yet I see there is more in rumour than in sight and appearance, and in this report as in all others of this nature, more is thrust upon the vulgar (who seem as well fearful of punishment as exempt from it, for all their great number) than they do justly deserve.

On Tuesday in the morning he came accompanied as before to Westminster; and having staid in the Exchequer-Chamber till nine of the clock, the King, Queen, and Prince came, as before upon the first day.

Then Mr Pym being called for, aggravated the charge, which was given the day before, by a very ample speech. It is impossible to call to mind all the hyperboles, the flashes, and superlative expressions that he used; the main points were, That it was a treason far beyond the reach of words, that he the Lieutenant, a native subject, and a peer of England, the prime governor of Ireland, the commander of his Majesty's forces, and a Protestant in religion, should have in such an impious and gross manner recompensed his Majesty's favours, abused his goodness, and drawn all his dominions into hazard and peril of their religion, lives, goods, and privileges; that one of these faults alone had been enough, and too much, for the fulfilling of the exorbitancy and wickedness of any one man; and that no punishment could be thought on, sufficient to expiate crimes of such a transcendent nature.

The Lieutenant, with no less moderation and wisdom, than the other with heat and passion, spake to his own defence; and that with such a measure of eloquence and liveliness, that his very enemies were affected with it, and do marvelously report of it.

He

He modestly recounted his services done to the King and crown of England, his endeavours for advancement as well of the honour as commodity of both kingdoms in general, but in particular that of Ireland; how he had engreathed and advanced the King's revenues there, restored the churches maintainance, suppressed the outlaws, established obedience to royal authority, and impeded the tyranny and usurpation of greater ones over the Commons. And for the effecting of all these actions, he mentioned himself the most weak and meanest instrument, with a wonderful prudence, in a middle way, betwixt the affectation of baseness, or dejectedness, and allegiance.

Mr Pym, after the close of his speech, told him that there were three new articles adjoined (by an after-search) to his charge; and desired that he might presently reply to the same.

Whereunto the Lieutenant answered, It was very strange, that after the close of the process, and when matters were come to be scanned, and examined by proof, that any new charge should be given in; yet least he should seem to decline the maintainance of his own innocency, and the just defence of his honour, he was most willing to hear them and have them alledged, provided that a convenient time might be assigned him to make his replies against them, as he had done to the others given in before.

But Mr. Pym excepted against this, and told him that the House did conceive it to be dangerous to grant any farther prorogation.

Upon this, the Lords of the Upper-House (who did not think it fit as yet to voice any particular in the audience of the House of Commons) did retire themselves, and after a pretty time of stay, they returned and declared, that they had found the Lieutenant's suit to be equitable, in desiring of further time for answering; yet seeing the articles themselves, neither for number nor weight, seemed to be of that im-

portance, but that he might furnish out a present answer, they thought it fitting to grant no delay.

The Lieutenant then, (intreating them to pass by and pardon the weakneses of his extemporary answers) desired to hear the articles read, which were these:

First, "That he had within these two years withdrawn forty thousand pounds Sterling from the exchequer in Ireland, and employed it to his own private uses."

Secondly, "That in the beginning of his government, the garrisons in Ireland had been maintained by the English treasury."

Thirdly, "That he had advanced Popish and infamous persons, as the Bishop of Waterford and others, to the prime rooms in the church of Ireland."

To the first he answer'd, That thirty thousand pounds were set apart for the King's late service, at his own most special and most peremptory commands; for which he produced the King's own letter, already approved as his acquittance at the exchequer-board in Ireland.

To the second, That at the beginning of that charge against him, as ever before his time, the garrisons had been burdensome to the kingdom of England; but that he had so improved it, and settled the King's revenue there, that the like is not to be heard in all the times that are by-past; for which, (if the best endeavours of a subject may justly expect any reward from his King and country) he craved leave to think that he rather deserved many thanks, than the least punishment.

To the third, He attested all the clergy in Ireland, if ever he had taken upon him any particular meddling in advancing their churchmen, or whether he had done any thing concerning such affairs, but upon the special advice and desire of the best and wisest of their number. For his part, when he befriended the Bishop of Waterford, he conceived of him as a man of integrity and learning,

learning, fit for such an employment; nor was there then the least suspicion of those monstrous impieties, wherewith he was afterwards charged; that he had now justly suffered for the same, and that he hoped they would not lay a necessity upon him to prophesy and divine of the future conditions and deportments of men. For others of the church, suspected of popery, he knew none such, but should answer to the particulars so far as they concerned him, when they should happen to be alledged.

After this the house dissolved for that night, the King's Majesty and the Prince having staid all the time; and the Lord-Lieutenant was appointed to come thither again on Wednesday morning; at which time they are to proceed to the first article, to give an oath to the witnesses, and to examine all the proofs whereon the process was builded.

It will be a very hard matter for him to expect every man's testimony, and to give his answers either for full satisfaction or diminution of all objections; which way of proceeding will spend at least a fortnight, if not a greater space of time; yet it is thought the lower house are impatient of delays. The expectations are exceeding various and different about the event of this great action; some think it will be impossible to escape the many and great accusations laid to his charge; others, and that the greater number too, are of opinion that he will be in no hazard of his life, and that it will not be possible to bring him into the compass of treason (*quod tam misere cupio ut non credam*). His adverse party is so great, and so far interested both in point of safety and honour against him, that *fletere si nequeunt superos*, &c. nothing will be left un-essay'd, that may accelerate his ruin.

He hath all this time carried himself courageously, to the admiration (and withal so moderately, that it is to the great satisfaction) of his very enemies; so that he

seems neither dejected with fear, nor to affect boldness with confidence, but to carry himself with that constancy and resolution, which his innocency and brave parts do promise.

The Irish commissioners here, have hitherto abstained from giving in any remonstrance against the Lieutenant, and do still plead to have an immediate dependance from the King, and not from the parliament of England. There was a report that the parliament of Ireland had sent a protestation against the act made the last year, for the King's supply in his expedition against the Scots, as a thing which was violently in part, and in part surreptitiously obtained from them: but I have learned this to be an untruth. I had almost forgotten one passage of Mr. Pym, who in the aggravation of the Lieutenant's faults, had this expression, That he was like the whore in the *Proverbs*, "He wiped his mouth, and with a brazen face said he had done no evil."

To this the noble Lord replied, That he wished his innocence might not be taken for impudence, that he hoped shortly to clear himself of all those foul aspersions which his malicious enemies had cast upon him; and he was very confident that he should give the honourable houses full satisfaction concerning his life hitherto, and thought of nothing more hereafter than to retire himself from all public employments.

Mr. Pym gave at this a great shout, and desired the house to take notice what an injury he had done to the honourable house of Commons, in calling them his malicious enemies.

Whereupon the Lieutenant falling down upon his knees, humbly besought them that they would not mistake him; and withal gave a large panegyrick of their most just and moderate proceedings, protesting that if he himself had been one of the house of Commons (as he had the honour once

to

to be) he would not have advised them to have done otherwise against his dearest friend; but withal told them, that he might justly say he had his own un-friends, which he hoped in time to make known. Nor did he all this time speak one bitter word against Mr. Pym, though justly incensed; which hath infinitely advanced his reputation.

I have been a daily hearer of these proceedings against this great personage now upon the stage, therefore do presume I can give a reasonable account thereof. The book of his charge is extant in print, so it shall be needful for me only to name the articles, as they were canvassed; and those designed by the house of Commons to be his accusers, which were those that follow.

The Names of his Accusers.

Pym, Glyn, Maynard, Whitlock, Lord Digby, St. John, Palmers, Sir Walter Earles, Stroud, Selden, Hampden, &c.

One of these began the speech; the rest, after their colleague had done, follow in their turn: so that he hath all of them to wrestle against, and yet sufficiently able for them all; though by his agitations his spirits are much exhausted.

Mr. Glyn, after a large flourish, on Wednesday, told the Lords, That the Lord Strafford was impeached, not with simple, but accumulative treason; for though in each particular article, such a monstrous crime could not be deprehended, yet when all was conceived in the mass, and under one view, he should be undoubtedly found the most wicked and exorbitant traitor that ever was arraigned at that bar. He added, That his charge was for intending to subvert and change the fundamental laws, liberties, and privileges of both the kingdoms, and to introduce an arbitrary and tyrannical form of government. This, he said, could not appear but by the fruits,

which were either in expression or action. The expressions were four:

First, That before several witnesses he had said at York, 'That the King's little finger should be heavier to them, than the loins of the law.'

To this the Lieutenant replied, That having spoken sufficiently before to his justification in general, he would moreover add these few words by their favours: That it did strike him to the heart to be attached of such a wicked crime, by such honourable persons; yea, that it wounded him deeper, in regard that such persons who were the companions of his youth, and with whom he had spent the best of his days, should now rise up in judgment against him; yet he thanked God for it, it was not guilt, but grief, that so much troubled him. He added, That it was a wonder how he had gotten strength sufficient in such infirmity of body, and such anguish of mind, to collect his thoughts, and say any thing at all for himself; but the Almighty God, who knows him to be innocent, had furnished him with some abilities to give testimony to the truth, and to a good conscience; he therefore intreated, that if either in judgment or in memory he should at any time fail, it might be imputed to his great weakness. And although the gentlemen his accusers should seem more ready in their accusations than himself in his defence, yet that might not prejudice his cause; who, in very unequal terms, had to do with learned and eloquent lawyers, bred up a long time and enured to such judiciary pleadings, and whose rhetorick, he doubted not, might present many things to their view in a multiplying glass. He told them farther, That for these many years he had been weary of public service, and that now it was his resolution, after he had vindicated his honour, to retire himself, and enjoy his much longed for privacy; and yet he could not but tell them

them so much, that it had been his hearty wish and desire, rather voluntarily to have resigned his places of honour, like a ripe fruit fallen from the tree, than to be violently pulled from thence, as a fruitless and unprofitable withered branch.

To the charge of treason, he said, That under favour he conceived that although all the articles contained in his impeachment were verified against him, yet they would not all amount to treason, neither simple nor accumulative; for (said he) I do not understand by what interpretation of law, the diversion of justice can be called a subversion of the same; or the exceeding of a commission, the usurpation of a new power. To the particular he replied, That his words were clearly inverted, for that his expression was, "That the little-finger of the law (if not supported by the regal power in granting pardons for penalties of the same) was heavier than the King's loins." That this was his expression, he verified.

First, By the occasion; for he spake the words a long time since, to some men who had lain imprisoned at York, and were then by the King's favour set at liberty; whom he incited to thankfulness (by this expression) towards his Majesty.

Secondly, By witnesses produced by him. In the examination of their witnesses he convinced one of them of an untruth, by interrogating him where he was when the speech was heard, and how far distant from him; when the man replied, that he was twelve yards from him; he answered, that it was impossible for him to hear a man three yards off, by reason of a deafness that had held him fourteen years; which being found true, the witness was rejected.

Another witness (Sir David Foulis) was brought against him; against whom he expected, as his known and professed enemy; it was told him, that he himself did not use to admit of exceptions against witnesses,

and therefore was to expect the same measure.

He replied, that Master Pym might one day perhaps be attached, for persuading the house of Commons to commit the same crime that was laid upon him as a charge of treason. But for all this, the witness was received, because in matters of treason a man's enemy may witness against him *pro domino nostro rege*; though, I suppose, the King's advice was never asked for the present. This was all that was done for that time.

On Thursday he was charged with the second expression, "That he said Ireland was a conquered kingdom, and that the King might prescribe them what law he pleased."

This they aggravated as a prime note of his tyrannical will and affection, that would permit no law to bind the subject, but what himself, and such as he, might draw up by sinister informations, from a gracious and well-meaning Prince; and if this were admitted, the whole power and liberty of the republic would be utterly lost.

To this he replied, That neither was the expression in those words, nor in that sense spoken or meant by him. The first part of it (said he) cannot be denied; to the second, that he had said only, "That the King was the law-giver," which he hoped none could deny without incurring the crime of treason; and that "the King's sentence was a law in matter not determined by acts of parliament," which all but disloyal subjects would grant. And that it had ever been his endeavour to have the liberty of the subject and the royal prerogative follow both in one channel; if either of them crossed each other, we could expect nothing but a subversion of the commonwealth, either by tyranny or rebellion; that the prerogative was like the first, the liberty of the subject like the second table; either both or neither can be preserved; that

that in his duty he stood obliged first to the King, as God's Anointed; then in the second place to his country, if it did not cross the regal power. And therefore hoped that what he had spoken was so far from being treason, that he thought a thousand such expressions would not make up one felony.

On Friday the two other expressions were followed; that he said, "He would not suffer his ordinances to be disputed by lawyers, before inferior judicatories, and that he would make an act of state equivalent to an act of parliament."

To the first he said, That he had often said (more than once) that he would not suffer his ordinance to be contemned; because, in him, his master's honour was wounded.

To the second, He thought a proportionable obedience was due to acts of state, as well as to acts of parliament; otherwise they were made in vain, if that both did not bind in one kind.

The Lord Cork (though his mortal enemy) was now examined, and admitted as a witness, whom in his deposition he convinced of two shameful oversights; for Cork had declared upon his oath, that the Lieutenant had caused to be interlined an ordinance against himself, and had caused some words to be scraped out; which words were notwithstanding still found to be in the sentence, by an authentic copy under the hand of Sir Paul Davison, Clerk to the council-board of Ireland.

Then Cork alledged, That he had advanced a groom of his to be a preacher; who by a testimony from the University of Dublin he verified to have been a master of arts ten or twelve years before his advancement; adding withal, that my Lord of Cork was an excellent scholar, who was able to breed such grooms.

Upon Saturday, having done with his expressions, they canvassed the first article about his actions.

Against the lives of the King's subjects, both in the case of the Lord Mountnorris, and also another of the King's subjects, both of whom he had sentenced to death by martial law, contrary to all law, and to the manifest subversion of the privileges of subjects, Magna Charta, and the Petition of right.

To the Lord Mountnorris's case, he replied,

1. That though that sentence had been unjustly given and rigorously prosecuted against him, yet the greatest crime that he could be charged withal, would but amount to manslaughter, or felony at the most.

2. That he hoped (though this were true) to obtain a pardon from his gracious master the King's Majesty, as well as Conway and Sir Jacob Astley had lately done, for exercising martial law in the northern army.

Then he replied to all the parts of the charge, which were four:

1. That he had exercised martial law in time of peace.

To this he answered,

(1.) That all armies have been, and must be governed ever by martial law.

(2.) That there is a standing army in Ireland, and therefore the case is all one in time of peace or war; and that the army might be undone, if they should not use martial law, but where to expect remedy for the settling of a mutiny, or assurance of obedience, from the common law.

(3.) That it had ever been the practice of the Deputies, particularly of Wilmot, Falkland, Chichester, yea Cork himself; and therefore was no new thing brought in by him. This he proved, both by the production of the military ordinances, and by divers witnesses, who knew sentences given in that kind by them.

(4.) That he had a particular warrant in his commission for this power.

(5.) That:

(5.) That in the Lord Mountnorris's case, he was commanded to exercise the same, by the King's particular letter: both which he caused to be read.

The second charge was, That he was both party and Judge, in the Lord Mountnorris's cause.

To this he replied, That he had sitten in judgment, because he was one *sine quo non*, the judgment could not proceed without him; but that he was not Judge, but party, appeared.

1. Because he sat discovered all the time.
2. Because he refused to give his own opinion.
3. Because he did not give his suffrage one way or other.
4. Because he removed his brother Sir George from having a hand in the process, in regard of interest of blood.

The third charge was, That he proceeded summarily in the matter of the Lord Mountnorris.

He replied, First, That he was not Judge in it, and that the council of war was to be answerable in the justification of their own proceedings.

Secondly, That after a long reasoning he had heard them say, that no delay could safely be granted in martial courts.

The fourth charge was, That he had not heard the exceptions made by Mountnorris against his witnesses.

To this he answered, as before, That he was not Judge in the case, and that he remembers no exceptions made against any witnesses. To which he added, That as he had been regulated in his proceedings, so he had been moderate in the execution of that sentence; for though the Lord Mountnorris justly deserved to die, yet he had obtained him the King's pardon, for the saving of his life; and protested, that he intended nothing by that sentence, but in some measure to repair his own honour, and to give Mountnorris fair reproof, who

was known to be of an exorbitant and licentious tongue and spirit. Adding, that if the house of Commons would go on the same way with him, and assure him that the issue of his charge should be nothing else but to admonish him for the time to come, he would thank them heartily for it, and study amendment in all pretended oversights. And whereas Mountnorris complained that he had jeeringly told him, when the sentence was passed and pronounced against him, That e'er he lost his head, himself would lose his hand; he answered, That he had been thought to be very insolent and haughty, yet he was never so impertinent to use this expression. If any fault were, it was for undervaluing himself, in saying, That e'er a hair of Mountnorris's should perish, he would lose his hand. And truly, (said he) if Mountnorris would say so to me now, even in the worst sense that can be conceived, That e'er I died he would lose his hand, I would take it very kindly from him.

For the other man, he avouched that he himself had voiced to hang him, both because he was an errant thief, and also had fled from his colours, which by the common law (and to this effect he cited a statute 20th of Hen. 6, and 7th of Hen. 7.) is felony. He concluded, That seeing he was not accessory to the sentence against Mountnorris, had not sat there as Judge, had a power to keep martial courts by his commission, had not exercised the same till a new command came from his Majesty, had done no more than ever was practised in Ireland before his time, and had at least obtained Mountnorris's pardon; he hoped there was nothing accusable in him, but his too remiss and too moderate proceedings.

Master Glyn bitterly replied, That he knew the time when the Earl of Strafford was no less active and stirring to enlarge the liberty of the subject, and advance the
petition

petition of right; than now he is for extending his own arbitrary and tyrannical government.

To this he replied, without the least semblance of passion, That if at any time he had done the least service to the House of Commons, he thought his whole life well spent; nor could they ever so graciously reward him, as to give commission to that gentleman to express so much before that honourable Assembly: But withal, if ever any such thing was done by him, he intreated it might now be remembered, and might now serve to overbalance some slight and mean oversights committed by him; which he hoped should never make him guilty of treason, unless it were treason for a man to have no more wit and prudence than God and nature had bestowed upon him. And so much for Saturday,

Upon Monday he was charged with the sixth article; that he had used a tyrannical government, not only over the lives (as appeared by the last) but also over the lands and goods of the King's subjects as appeared by this article; wherein he was charged to have dispossessed the Lord Mountnorris of a tenure of lands, by a summary process before himself, contrary to all law; and therefore had failed,

1. Against the Act 7 Hen. 6 which provides all matters to be determined by the ordinary judges.

2. Against the cautions sent to Ireland by King James, expressly forbidding such power hereafter to be exercised.

3. Against the King's late proclamation.

4. Against the practice of all deputies before that time.

Withall they added, That it was a tyranny that could not be expressed, to exercise this power over the persons of the peers of the land, and their goods.

To this he replied, That for his part, in matter of justice (under favour he spake it) he thought there was no distinction to be

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made betwixt a peer of the land and one of the commons, except they did think that either fear or faction should do something, which had no place in him.

To the particulars:

1. That the Act of Hen. 6. answered it self sufficiently, both because it excepted the court of requests (and that his proceedings were nothing else in Ireland) and also makes: an express reservation of the King's prerogative; which he said was his strength, because he derived his commission from the King, and that the act was the most express warrant in the world for him.

2. That he had not failed against the cautions given by King James,

(1.) Because they were not charged upon him.

(2.) Because they were never observed, nor could be by the deputies to whom they were given; which he proved both by witnesses and writings.

(3.) Because the caution made rather for him than against him, in that it contained the word hereafter, which manifestly implied that the power had been sometimes before exercised in Ireland, and not only by himself; and therefore thanked him for that testimony and hint.

(4.) That though the cautions had been given to him, yet he had received an express command from the King his master to put that power in use: causing the King's letter, for that purpose, to be read; and professing withal, that he was tender to exercise that power, till the King (induced by the humble remonstrance of the meaner sort of people) had most peremptorily, and upon most just reasons, commanded him.

3. That he could not obey the King's proclamation five years before it came out; and that he wished from his heart, that they would but respect the King's commands and commissions with that tenderness of affection.

fection and obedience, as he did his proclamations.

4. He proved it to be the constant practice of all deputies that went before him.

It was objected, That other deputies had indeed upon suits of equity determined themselves, as to matters of debt, but never of land.

He replied, First, That the same authority reacheth as well to the one as to the other. Secondly, That neither he nor they had ever given sentence, or determined any thing concerning matters of inheritance; but only concerning violent intrusion, which fell directly within a suit of equity. To which he added,

First, The equity of that court, that it proceeds upon the same grounds and evidences as that of the common pleas, and that he had the assistance of two of the learned judges in deciding the controversy.

Secondly, The profit of that court, which dispatcheth the poor in a day or two; whereas the common law would keep them so many years, which they are not able to sustain.

Thirdly, the necessity of that court in that kingdom, which hath been ever governed by that way, and therefore impossible to debar the natives from it, without great inconvenience; for it would utterly undo them, and none is prejudiced by it but the lawyers. And therefore seeing that he had done nothing but what was customary, necessary, and equitable, commanded to it, and the sentence just; he hoped rather for thanks from the state, than a charge for his ill deportment. Withal he shewed with what extortion and violence the Lord Mountnorris had taken seizure of that piece of land, and made the playing of his game to be very foul. And at last he added, that he had done no more in Ireland, that the court of Request in England usually doth, and that the Chancery-court in Ireland doth the same daily; and the last Chancellor was never charged (said he) for

such proceedings, though this his power and authority was less than mine; but the difference of the person and his authority (it seemeth) differeth the matter. And this was the business on Monday.

On Tuesday they passed by the 7th article, and the two first parts of the 8th, about the Lady Hibbot's land; that he had violently thrust her from her possession by this summary way of justice, and afterwards purchased the land to his own use, by borrowing the name of Sir Robert Meredith.

In this probation, the testimony of the gentlewoman's own son was used, of the Lord Cork, and the Lord Mountnorris, all his back-friends, or professed enemies; and yet they proved very little, but what they took upon hear-says. Their prime allegation was,

First, that though the major-part of the council-board had voted for the lady, yet the Lord Lieutenant had given decrees against her.

Secondly, that all was done to his own behoof.

To the first, He produced the sentence under the hand of the clerk of the council-board, subscribed by the major part.

To the second, He attested that he had no under-dealing with Meredith; for the Lady had got her own lands back from the said Sir Robert Meredith. He also declared at length with what fraud and deceit the Lady had come to her lands, and upon what reasons they were restored.

After this article they fell on the 9th, about the giving of commission to the Bishop of Downe and Connor, for apprehending all such persons, and presenting them before the council-board, as contemned the ecclesiastical ordinances.

This was aggravated as a point mainly against the liberty of the subject.

To this he replied:

First, He produced the Primate of Ireland's testimony under his hand, (he being himself

himself sick) that the same course had been used in Ireland before; and that Bishop Mountgomery his predecessor in the bishoprick of Meathe, had had the same.

Secondly, he shewed the equity that such assistance should be given to churchmen, who otherwise, because of Papists and Schismatics, either to God or the King, would have no respect or obedience given them in that kingdom.

Thirdly, He proved by two witnesses that such warrants were in use before his time.

Fourthly, He said he had never granted any but that one, and had presently, within some few months, called the same in again. What, (said he) was the Bishop of Downe's carriage in it, he had no reason to answer for: But he presumed the Bishop could give a satisfactory answer for himself, when he should be called in question. And so he concluded, that a matter so just, so necessary, so customary and practical before, he hoped should not be charged upon him as an introduction of a new and tyrannical form of government; and therefore submitted himself to the mercy of God, and the equity of his peers in his trial. And this was the work on Tuesday.

The ability of this brave gentleman ravished his hearers with admiration, though he be infinitely spent both in body and mind by the continued and almost uninterrupted agitation.

After the 9th article was passed, against the commission issued in favour of the Bishop of Downe and Connor; upon Wednesday Mr. Glyn proceeded to the 10th article. The charge was, That the Earl of Strafford having established an arbitrary and tyrannical government over the lives, lands, and liberties of the King's subjects, his next desire was to make intrusion upon the crown itself, that by applying to his own use the public revenues, he might be the more enabled to accomplish his dis-

loyal and traitorous intentions. To which end, having by a new book of rates enhanced the customs, he had gotten by his lease above twenty-six thousand pound yearly. This (they added) was a crime of a higher nature than those contained in the preceding articles, because in those there was some colour or pretext of justice, here none; those in particulars, this in general; those against the subject only, this against the King himself.

For the proof of the charge, they produced the lease of the Duke of Buckingham.

Which was read and compared with that lease to the Duchess of Buckingham, (which the Lieutenant hath now by assignment) and some differences shewn, arising to the sum of two thousand pounds in the Duke's lease; only the moiety of concealed and forfeited goods were due to him, but the whole goods to the Duchess in her lease. Again, the King's ships of prizes did not pay custom in the Duke's lease; in the Duchess's they did. Again, the impost of the wines (then belonging to the Earl of Carlisle) was not in the Duke's lease; in the Duchess's it was. Lastly, Whereas the Earl of Strafford paid but fourteen thousand pounds per annum for the custom, it was worth to him, as was apparent by the books of the exchequer, forty thousand pounds.

Witnesses were examined.

First, Sir James Hay, who deposed, That the Earl of Carlisle had an advantage of one thousand six hundred pounds per annum by his lease of wines.

Secondly, The Lord Ranelagh, who deposed, That by the inspection of the books of accompts, he had found the customs to be anno 1636 thirty six thousand pounds, anno 1637 thirty nine thousand pounds, anno 1638 fifty-four thousand pounds, anno 1639 fifty-nine thousand pounds.

With the proof they concluded the charge.
That

That notwithstanding the Lord Strafford pretended a great measure of zeal and honesty in his Majesty's service, yet it is evident he had abused the trust put upon him, and by withdrawing so great sums of money from the crown, had weaken'd the King, prejudiced the subjects of the protection they were to expect from him, and had been the cause that the extraordinary way of impost and monopolies had been undertaken for supplying of the Royal necessity. And that this act therefore ought to be enough to make the charge and impeachment of high treason laid against him.

The Lieutenant's reply was, That he conceived he had given full satisfaction to all hitherto brought against him about that pretended arbitrary government; nor would he spend time in vain repetitions: For the present article, though in all its parts it were granted to be true, yet he could not perceive by what interpretation of law it could imply the least act of treason; and when it should be directly charged upon him as a point of misdemeanor, oppression, or felony, he made no doubt but he should be very able to clear himself abundantly in that point also; yet lest any prejudice might stick to his honour by these bold assertions, he was content to step so far out of the way, as to give answer:

First, That it concerned him nothing what particulars in the lease had pass'd betwixt the King and the Duchess of Buckingham, or whether she had obtained a more easy condition than the Duke her husband, especially seeing that same was granted some years before his coming to that government; yet thus much he could say, That the Duchess had paid thirty thousand pound fine; and therefore no wonder her yearly rent was the less.

Secondly, For the book of rates (wherein the chief matter of oppression and grievance seemed to rest) the same was there established by the deputy Falkland, anno

1628; three years before his going into Ireland; and therefore it was exceeding strange, in his apprehension, how that could rise up in judgment against him.

Thirdly, That he had his interest in the customs by assignation of a lease from the Duchess, which was given her before his government: Nor did he ever hear it alledged as a crime of treason, for a man to make a good bargain for himself.

Fourthly, That not of his own accord, but at the King's special command, he had undergone that charge, in hopes that upon the enquiry into the worth thereof, the customs might be improved for the benefit of the crown, and the true value thereof discovered. This he proved by the Lord Cottington and Sir Arthur Ingram.

Fifthly, That when a new book of rates was recommended to him by the council-board of England, in the time of his lease, he so far preferred a fear he had that the trade of Ireland might thereby be discouraged before his own commodity, as he presumed, in all humility, to refuse the said book of rates, and tendered his reasons thereof to the kingdom and council-board of England.

Sixthly, That he never understood that the customs could arise to those great sums alledged; but though they should, yet his advantage was but small. For first dividing the fourteen thousand pounds he paid to the King, then five parts of eight, which was yearly given in upon oath (and that procured first by himself) at the exchequer-board; the other three parts divided amongst four of them which were equal sharers in the lease, would not amount to any great sum of money. And therefore except it were treason for him to have improved the King's revenue, encouraged the trade, and refused the new book of rates, he could in his own weak judgment discern none there; nor could he think it a crime for him to take an assignation of a lease granted before his

his time, and to insist on the book of rates used before his coming over. And therefore was confident the lords would rather take his accusation as an exercise of rhetoric in the gentlemen his adversaries, than as a thing spoken in good earnest by them.

The same day the 11th article, concerning tobacco, was charged on him by the same man, Mr. Glyn, after this manner; That for the farther advancement of his tyrannical and avaritious designs, he had of himself established a monopoly for the restraint of tobacco in that kingdom: where they offered five particulars to the proof;

1st, That he had restrained the importation of tobacco.

2dly, That in the mean time he had brought in a great quantity himself, and sold the same at exorbitant prices.

3dly, That of tobacco already imported, he had forbidden any to be sold but what was first sealed by his officers.

4thly, That upon a pretended disobedience he had punished a great number of people by seizures, imprisonments, fining, whipping, pillory, and such like cruel and inhuman usages.

5thly, That by these means he had gained one hundred thousand pounds yearly.

For proof hereof,

First, The proclamation for restraining tobacco was read.

Secondly, The proclamation about the sealing of the same.

Thirdly, Some Witnesses, who declared ships had been restrained from landing tobacco.

Fourthly, Others, who had known some tobacco seized on as forfeited.

Fifthly, The remonstrance of the house of commons in Ireland, declaring that the earl had sold 500 tun of tobacco, which, sold at 2s. 6d. per pound, amounts to 10000l.

They concluded the charge, That he had sucked up the blood, and eaten up the king's liege people; and had by this one point of oppression raised greater sums to himself, than all the king's revenue in that kingdom extended unto. And therefore was liable to the crime of treason, for troubling the peace, and bereaving the people of their goods, who were intrusted to his care and government.

The lieutenant's reply was,

That his most secret thoughts were conscious of nothing but a sincere intention; and endeavour to promote and advance the welfare of that kingdom: and withal, he conceived (by their leaves) that nothing in that charge could have the least reference to treason; yet, as he said before, for removing of all prejudice, he was contented to answer:

First, That long before his coming to Ireland the same restraint had been of tobacco, and the same impost of eighteen pence per pound enjoined by king James.

Secondly, That at that time the tradesmen for this commodity paid but twenty pounds a year to the crown for the impost, but now 400l.

Thirdly, That the parliament in Ireland, 1628, had petitioned to have this impost settled by an act of state for ever afterwards, as a part of the revenue of the crown.

Fourthly, That he had express command from the king for issuing those proclamations; and therefore could not imagine more danger in them, than in others for monopolies in England, in the worst sense.

Fifthly, That the proclamations were not put forth by himself alone, but by the whole council-board of Ireland.

Sixthly, That for the contract of tobacco, he was so tender of it, that it was sent over hither, and seen and approved of by the council-board of England before it was condescended to in Ireland.

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For the proclamations, he told them it was his own opinion, (and if he failed in it, he humbly craved pardon, and hoped that it should not be treason to have no more judgment than God had bestowed on him) that the king was endued by God with a power to make temporary laws, and cause the same to be promulgated for the good of his people, upon sudden emergent occasions; to which laws obedience is due, till they be abrogated by ensuing parliaments. That he restrained no man from importing tobacco, who was willing to pay the appointed impost. That for his part, he had never trafficked in all his time in that kind, nor had any part with the contractors: and if any tobacco was seized on, it was upon contempt of the proclamations. And if any person were censured to the pillory or whipping, it was for known perjury, the ordinary and usual punishment in such a case. Concerning the tobacco imported, (he said) no consideration was taken of the prices given for the tobacco beyond seas, of the king's revenue of four thousand pound, of the merchants pains and danger in bringing the same home. For his part, if any advantage were made, surely it was not his; nor could he annul every contract or lease made by the king. And therefore, seeing his interest was none, he had done nothing but at the king's directions, and at the advice of the council-board; seeing the same impost was in king James's time, and petitioned for by themselves in Ireland; he hoped his carriage in the business should be so far from a crime of treason, that it should rather be thought no crime at all. So much for Wednesday.

Upon Thursday he was charged with the 12th article, concerning flax, by Master Maynard, on this manner; That the flax, being the native and principal commodity of that kingdom, was by him (the lieutenant) restrained, and the subjects put to that which was unknown, yea, impossible

for the Irish to make the same into Yarn. Here they complained of three things;

First, That by proclamation he had restrained selling of flax.

Secondly, That he had ordered the making of yarn of such and such lengths and numbers of threads.

Thirdly, That the native Irish being unacquainted with such customs, upon pretended disobedience, had all their flax and yarn seized on to his use; whereby a great many families were reduced to such penury, that they died by great numbers in the fields for want of food.

For proof hereof, they brought;

First, The proclamation about the restraint.

Secondly, The warrant for seizing the forfeited goods.

Thirdly, The execution of the warrant proved by Sir John Clotworthy, and Lord Ranelagh.

Fourthly, The remonstrance from the house of commons in Ireland, That upon the rigorous course and execution of this warrant many persons died for want of food. They concluded the charge therefore, though the article did not individually imply treason, yet it did make very much for the accumulation of treason.

The lieutenant's reply was,

That, as before, he would, and must ever repeat it, that nothing was in the charge that contained treason. To the matter itself he answered.

First, That the proclamations issued forth were grounded not only upon convenience, but upon necessity; because that, except some way had been taken for ordering of yarn, the merchants had absolutely given over the linen-trade in that kingdom.

Secondly, That the council-board was as liable to the charge as himself, amongst whom were at that time the primate of Ireland, the archbishop of Dublin, Chancellor

cellor Loftus, and the Lord Mountnorris, all subscribers to the proclamation, men to them of known integrity and judgment.

Thirdly, That nothing was more common than for the council-board of Ireland to give orders for reducing the natives to the English customs, and to fine them for drawing their horses by the tails, during their corn, and such like; and he conceived that to be a thing of the same nature.

Fourthly, That the special thing inducing him to it was, because he perceived the trade of wool to increase much in that kingdom. He dissuaded by all means the making of woollen-cloth, because of the infinite detriment that might happen thereby to the kingdom of England; and therefore thought this the best way to encourage the wear of linen-cloth. For the warrant to seize upon the goods, he affirmed the same to be necessary, because there should be no contempt to proclamations: but that any part thereof did accrue to him, he flatly denied. If any rigour was used in the execution, he said not he, but his officers were to answer for it; for this might happen in the most just and necessary commands; nor was there ever any complaint presented to him of any such matter. For his part, he had lost thirty thousand pound in the manufacture, established by himself for the encouragement of others.

To that, that persons died by this means, he replied, That it was more than ever he heard, or could think possible; yea, that he was cleared by the allegation itself, which saith that the same happened since his coming from Ireland.

To the remonstrance of Ireland, he conceived, That a charge was but a slender proof of a charge; and that especially upon interrogatories, not upon oath, seeing that privilege was not due to the house of com-

mons neither here nor there; that he might say it in truth and modesty, he deserved much better of that people, and might take up that in the gospel, "For which of all my good deeds, &c." yet he hoped to be better understood shortly both here and there. And for his part, though his pursuit had been hot, yet God was his witness he never intended to take the least impression of revenge for those discontents and affronts which had been eagerly put upon him; or to carry any thing hence with him from that bar, where so many foul aspersions had been unjustly thrown upon him, but only *gratuitas cicatricis*.

The same day a fresh man (Master Palmer) entered the lists against him; who having past by, for want of proof, the thirteenth, fourteenth, and part of the fifteenth articles, insisted only upon the second part, for giving warrant to Serjeant Savil for seizing and laying soldiers upon the subjects. He charged thus; That the Lord Strafford, having by a tyrannical power inverted the ordinary course of justice, and given immediate sentence upon the lands and goods of the king's subjects, under pretence of diobedience, had used a military way for redressing of the contempt, and laid soldiers upon the lands and goods of the king's subjects, to their utter ruin. This article (he said) of itself did contain an individual treason; so that if there were no more than this, it were more than sufficient to convince him of his impeachment.

Here he offered two things;

First, The proof of the point.

Secondly, By what statute this act of tyranny directly, and by itself, implied treason. For the first, Serjeant Savil was called, who produced the copy of the warrant upon which he had settled the soldiers.

At this the lieutenant rose, and humbly intreated the lords no evidence should be received against him upon an article of such importance,

importance, but what might be thought authentick; and such a one, under favour, he conceived that copy not to be:

First, Because no transcript, but the original only, can make faith before the King's-Bench in a matter of debt; therefore far be it from them to receive a most slender testimony in matter of life and death, before the supreme judicatory of the kingdom.

Secondly, If copies be at any time received, they are such as are given in upon oath, to have been compared with the originals, which are upon record; such an one was not that copy.

It was replied by Master Glyn, (for all of them spake as occasion served) That the house had but the day before admitted copies as evidences, much more should they do this, when it was prosecuted by the officer himself, who best knew it, having executed the same.

To this the Lieutenant answered, That
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 cer himself
 producing it, that was the best argument
 he could use, why it should not be admitted. For (said he) Master Savil may be charged with treason, for censing men of war upon the King's subjects; he hath nothing for his defence, but a pretended warrant from me. Now what he swears to my prejudice, is to his own advantage; nor can a man, by any equity in the world, be admitted to testify against another, *in suam justificationem*.

The point seemed exceeding weighty, and in effect was the ground-work of the whole article; which not proved, nothing could evince him to have been accessary to the consequence. The upper house therefore adjourned themselves, and went up to their own court; and after a very hot contestation between the factions, and above

an hour's stay, they returned, and declared, that the Lords, after mature deliberation, had resolved that the copy should not be admitted; and desired them to proceed to other proofs; which after a little pause they did.

First, the Lord Ranelagh affirms, that he heard of such a warrant, and knew sometimes three, sometimes five soldiers billeted by it.

Secondly, Master Clare declares the very same.

Thirdly, Another deposeth, he had seen such a warrant under the Deputy's hand and seal. And so much for the proof.

For the statute they alledged one of Edward III. 6. That whoever should carry about with them English enemies, Irish rebels, or hooded men, and cels them upon the subject, should be punished as a traitor. Another of Hen. VI. 7. That whosoever should cels men of war in his Majesty's dominions, should be thought to make war against the King, and punished as a traitor. They concluded, It was evident the Lord Strafford had incurred the penalty and breach of both the statutes, and therefore desired the Lords should give out judgment against him as a traitor.

The Lord-Lieutenant's reply was, That in all the course of his life he had intended nothing more than the preservation of the lives, goods, and welfare of the King's subjects; and that he dared profess, that under no deputy, more than under himself, had there been a more free and uninterrupted course of justice.

To the charge he answered, First, That the customs of Ireland differed exceedingly from the customs of England, as was clear by Cook's book; and therefore though censing of men might seem strange here, yet not so there.

Secondly, That even in England he had known soldiers pressed upon men by the Presidents of York and Wales, in case of known

known and open contempts; and that both in point of outlawry and rebellion, and also even for sums of debt between party and party, there is nothing more ordinary than these cessings to this day in Scotland, whereby the chief house of the owner is seized upon.

Thirdly, That to this day there hath been nothing more ordinary in Ireland, than for the governours to appoint soldiers to put all manner of sentences in execution; which he proved plainly to have been done frequently, and familiarly exercised in Grandison's, Falkland's, Chichester's, Wilmot's, Cork's, Evers's, and all preceding deputies times; and had even for outlawries, for the King's debts in the Exchequer, of collection, of contribution-money, and (which comes home to the point) for petit sums of money between party and party; so that he marvelled, *quæ fronte*, or with what boldness it could be called an arbitrary government lately brought in by him.

To this the Lord Dillon, Sir Adam Loftus, and Sir Arthur Teringham, deposed; the last of whom told, that in Falkland's time he knew twenty soldiers cessed upon a man for refusing to pay sixteen shillings sterling:

Fourthly, That in his instructions for executing his commissions, he hath express warrant for the same, as were in the instructions to the Lord Falkland before him; both of which were produced and read.

Fifthly, That although all these precedents were not known, yet it were not possible to govern the kingdom of Ireland otherwise, which had been from all times accustomed to such summary proceedings.

Sixthly, That no testimony brought against him can prove that ever he gave warrant to that effect; and for the deeds of the Serjeant at Arms, he did conceive himself to be answerable for it.

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As for the acts of parliament, he had reserved them to the dispute of his lawyers; but was content to say thus much for the present.

First, That it is a ground in the civil law, that where the King is not mentioned, there he cannot be included; but (with all deference to his sacred person be it spoken) he conceived himself to be in his master the King's place (for so his commission did run) in that kingdom of Ireland.

Secondly, The words of the statute are not applicable to him; for God knows, he never went about in person to lay soldiers upon any of the King's subjects.

Thirdly, That the King's own soldiers, requiring in a customary way obedience to his orders, could in no construction be called Irish rebels, English enemies, or hooded men.

Fourthly, That the use and custom of the law was the best interpreter thereof; and for that he had already spoken enough.

Fifthly, That it favoured more of prejudice than equity, to start out such an old statute against him, and none others, though culpable of the same fact, to the overthrow and ruin of him and his posterity.

Sixthly, That (under favour he conceived) for any Irish custom, or upon any Irish statute, he was to be judged by the peers of Ireland.

Seventhly, That statute, of what force soever, was repealed;

1st. By the tenth of Henry VII. where it is expressly declared, nothing shall be reputed treason hereafter, but what is so declared by the present statute: now not a word there of any such treason.

2dly, By the eleventh of Queen Elizabeth, where expressly power is given to the deputy of Ireland, to cels and lay-soldiers, although the same be reputed treason in any other.

To the statute of Henry VI. he replied, That a slender answer might serve; he hoped

hoped that no man would think him so inconsiderate to war against the King of Britain and Ireland, by the culling of five soldiers; that he had been charged by many for taking arms for the King, but to that time never for taking arms against him; and that he heartily wished, that no man in all his Majesty's dominions had more practices with rebels and rebellious designs against the King than himself. So much for Thursday.

At the close he desired the intermission of a day, that he might recollect his spirits and strength against the next quarrel; and with some difficulty obtained rest till Saturday.

Upon Saturday Mr. Palmer proceeded to the sixteenth article, and charged thus; That the Lord Strafford having established a tyrannical and independent authority, by giving summary decrees and sentences, had deprived the subject of all just remedy; for in that kingdom there was none supreme to himself, to whom they might appeal; and lest their just grievances might be made known to his Majesty, he had obtained a restraint, that no complaint should be made of injustice or oppression done there, till the first address had been made to himself, and that no person should come out of that kingdom but upon licence obtained from himself.

For proof of this, First, The instructions were read, whereby that restraint was permitted.

Secondly, The proclamation, that all noblemen, gentlemen, undertakers, officers, or other subjects that should resort into that kingdom, should not come from thence without a licence from him.

Thirdly, That he had restrained the Earl of Desmond, because of a suit in law depending between the Earl and himself, till publication of the same was passed.

Fourthly, That the Lord Roch being informed against before the Star-Chamber,

he would not licence him to come into this kingdom, till the sentence was passed against him.

Fifthly, That one Marchatee having pretended a mind to travel, was denied a licence.

Sixthly, That the whole committee for the parliament was restrained this last year by Deputy Wansford, which they said might be interpreted to be his fact, both because they had such intelligence the one from the other, as also by the proclamation issued by him before.

Seventhly, That one Parry, servant to Chancellor Loftus, was fined five hundred pounds at his return, for departing Ireland without licence.

Eighthly, That the Irish Remonstrance complained of this, as the greatest innovation and thralldom put upon them since the time of the conquest.

They conclude the charge, That by this means having taken off that intelligence which should be between the King and his people, and having deprived them of that remedy which in reason they might expect from so just and so gracious a Prince, he had taken upon him a royal and independent power, and had faulted highly both against King and state.

The Lieutenant's reply was, That he hoped to make it clear, that he had done nothing in that particular, but what was usual, necessary, and just; and that he should be very well able (by the grace of God) not only of that, but of all other his public actions, to give a reasonable account, though not free from much weakness, yet certainly from all malice and treason.

To the particulars:

First, For instructions laid upon him, he was not so much chargeable as those of the council of England, whereof there was a great many present who could witness their commands; but lest any thing should seem unjustly enjoined by them, or embraced by him,

him, he desired that the reasons of their instructions might be read; which were, "That it were injustice to complain of injuries, of oppression done in that kingdom, till first the deputy's judgment was informed, and tryal made of his integrity; that it would much discourage the ministers of state there, and expend the monies of that kingdom; if upon every trifling business complaints should be admitted in England; and that if justice were there denied by the deputy, it should be lawful for any man to come over."

Secondly, For the proclamation, that the same was builded upon the statute of that kingdom, the 25th of Henry VI. which contained the same restraint *verbatim*.

Thirdly, That anno 1628, the agents for the Irish nation had petitioned for the same from the King.

Fourthly, That the Deputy Falkland had set forth the same proclamation.

Fifthly, That he had the King's express warrant for it, anno 1634, which was read.

Sixthly, That he had received the warrant in January, yet the proclamation issued not out till September after.

Seventhly, That the whole council-board of Ireland had not only condescended, but also pressed him to it.

Eighthly, The necessity of the kingdom required the same; for if the gentlemen had the ports open to go to Spain, and their scholars to Doway, Rheims, or St. Omers, it were likely at their return they would put fire both in church and state, and produce very sad events, by practising to distemper both.

Ninthly, He conceived that the King, as great master of the family, might restrain whom he pleased from departing his kingdom without his privy; and here it was not lawful for any to go from England without licence; how much more necessary was this from Ireland?

To the proofs he answered, First, for Desmond, he granted he was restrained indeed; but not for any suit of law betwixt them, but because at that time he stood charged with treason before the council in Ireland, for practising against the life of one Sir Valentine Cooke.

Secondly, For the Lord Rock, he had oftentimes marvelled with what reason the man at that time could be a licensee, seeing he was a prisoner for debt in the castle of Dublin; and if he had granted a license to him then, it had been a far more just charge of treason than now.

Thirdly, For Marchate, he was afraid of his going to Spain; and if he had intended to go for England, and complain of himself, he would not have refused him liberty, as he never did to any.

Fourthly, That the committee of Irish was not restrained by him, and therefore did not concern him at all.

Fifthly, That for Parry, he was fined indeed, but that it is expressly said in his sentence, that it was not for coming over without license, (as is suggested) but for sundry contempts against the council-board in Ireland.

Sixthly, That he had replied in the last article, a remonstrance was no proof at all. He concluded, that he hoped the least suspicion of treason could not accrue to him from the article for oppression or misdemeanour, when it was laid to his charge, he made no doubt but he should be able to answer it.

The same day a new man was hurried out against him, (Mr. Whitlock) who having passed over the 17th and 18th articles, resteth on the 19th, about the oath administered to the Scots in Ireland, and charged thus:

That it was the height of his tyranny, not only to dominate over the bodies, but also over the consciences of men; to which purpose.

purpose he had enjoined an oath to the Scots in Ireland: and because some out of tenderness of conscience did refuse to take the same, he had fined them in great sums of money, banished a great number from that kingdom, called all that nation traitors and rebels; and said, if ever he returned home from England, he would root them out both stock and branch.

For proof of this First, Sir Jammy Mountgomery was produced; who declared at large how that oath was contrived.

Secondly, Sir Robert Maxwell of Orchiardon, who spake to the same purpose.

Thirdly, Sir John Clotworthy, who declared that a great number had fled the kingdom for fear of that oath.

Fourthly, One Mr. Samuel, who deposed, that upon the tenth of October 1638, he heard the deputy say these words, "That if he returned, he would root them out stock and branch."

They concluded, That this was a point of the most tyrannical and arbitrary government, that before this time was ever heard of, not only to lord it over the fortunes, but also over the souls of men: and that it rested only in the parliament, which hath the legislative power, to enjoin oaths. And that therefore this was one of the chief points he had done against the privileges and liberty of the subject.

The lieutenant replied, That every new article acquainted him with a new treason; that if he had done any thing in all his life acceptable to the king and country, he conceived it to be this.

To these particulars, First, He desired the lords would call to mind the condition of those times; no man (pointing to my Lord Steward) knows better than your lordship, who had then the chiefest place in his majesty's service. I would be very sorry to rub (said he) old sores, especially

seeing I hope things are in a fair way to a firm peace, and I wish that I may not be deceived, that is, that it may be so; only thus much I may say, we had then greater fears and apprehensions in Ireland, lest the Scots in the kingdom (who were above one hundred thousand souls) might have joined with their countrymen at home, for the disturbance of our peace: mean time we detected a treason of betraying of the castle of Knockfergus to a great man in that kingdom, (whose name I now spare) by one Freeman, who upon the discovery was executed.

The council-board therefore in Ireland resolved to prescribe the Scots an oath, whereby they might declare their discontent at their countrymens proceedings, and oblige themselves to the king's service: but while we were about this, they of their own accord came to Dublin to petition for it, and took it with a wonderful alacrity and heartiness; so that it is a marvellous falsehood for any man to say it was invented, or violently enjoined by me.

Secondly, About the same time the same oath, *verbum verbo*, was by the council of England prescribed to the Scots, at London and elsewhere; which was no small encouragement to us in Ireland.

Thirdly, I had, (said he) which I never shewed, because I had no need before this time, a special warrant from the king, all written with his own hand, to that effect: and when the king commands a matter not contrary to law, truly I (said he) do conceive it both contrary to law and conscience not to yield him all due obedience. For the proof brought against him, there was nothing seemed to be of any moment but the words.

For the first words, "That he had called all the nation rebels and traitors," he said there was no proof at all, nor indeed could there be any: for if I had said it, (quoth he) I had been perfectly out of my

my wits; and, he thanked God, such irrational speeches used not to escape him. He honoured that kingdom very much, because it was the native soil of our dread sovereign, his gracious master; and because he knew a part, yea (he hoped) the greatest part of them, had been, and ever will be, as loyal and dutiful to the King as any other of his subjects: and of those too who had subscribed that unhappy combination, he knew a great many had done it against their hearts and wills, and would be ever ready upon occasion to remonstrate the same, by adhering to the King's service. So that this accusation was nothing but a wresting and perverting his words and meaning, of purpose to make him odious, and irritate a whole nation against him.

For the other words, they were proved only by one witness, which could make no sufficient faith; and that witness too he would evince, if not of perjury, yet of a notable mistake: for he had sworn positively that he had spoken these words the tenth of October, whereas he was come out of Ireland into England the twelfth of September before, and was at London the one and twentieth.

For those that had fled the kingdom because of that oath, he knew none such; and if they did, they fled into Scotland, which might sufficiently argue their intentions and resolutions. For his part, if they were not willing to give that testimony of their loyalty to their Prince, although he had known of their departure, he would have been very loth to have kept them against their wills, but should have been gladly rid of them, and have made them a bridge to be gone, rather than stay.

Upon Monday, Master Whitlock proceeded to the 20th article, and told him, That because the matter was intervenient, *et concimilis nature*, they had resolved to join the five next articles together; because

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all of them tended to one point or period: that is, to shew what bad design he had, to have subdued the kingdoms both of England and Scotland by force of arms, and to reduce them to that arbitrary government he had lately introduced into Ireland.

The Lieutenant intreated that they would proceed according to the order prescribed by the house, which was article by article: he said, five articles were many, the matter weighty, his memory treacherous, his judgment weak.

It was bitterly replied by Master Glyn, That it did not become the prisoner at the bar to prescribe them in what way they should give in their evidences.

The Lieutenant modestly answered, That if he stood in his place, he would perhaps crave the like favour, unless his abilities did furnish him with more strength than he could find in himself: for his part he was contented they should proceed any way, always provided they would grant him a competent time for replying.

Then Whitlock went on, and told the Lords, That something in those articles concerned the Scottish, something the English nation. That which concerned the Scottish, he reduced to five heads:

First, That the Deputy had said at the council-board, "That the Scots demands contained sufficient matter to persuade to an offensive war."

Secondly, "That the same demands did strike at the root and life of monarchical government, and were only to be answered by the sword."

Thirdly, That he had caused some Scottish goods and ships to be seized on in Ireland.

Fourthly, That he had engaged the Irish parliament, by their declaration, in that war against the Scots.

Fifthly, That by all possible means he had put bad thoughts and suspicions into his

O

Majesty

Majesty against his Scottish subjects, and laboured to make a national quarrel between them and England, which, if the King's piety, and the prudence of better-affected statesmen had not prevented, could not have been foddered up again without much blood.

Concerning England, his speeches were either before or after the parliament.

First, before his creature and bosom-friend Sir George Ratcliff, he had said to Sir Robert King, when he was doubting how the King might have monies to pay his armies, "That the King had four hundred thousand pounds in his purse, thirty thousand men in the field, and his sword by his side; and if he wanted money afterwards, who will pity him?"

Secondly, That his brother Sir George Wentworth had said to Sir Robert Barrington, upon the dissolution of the last parliament, "That seeing the English would not grant supply to the King, it seems they were weary of their peace, and desired to be conquered a second time.

Thirdly, That he himself, upon a discourse with the Primate of Ireland, had said, "That he was much of the mind of those English divines, who maintained it lawful for a King, having tried the affection and benevolence of his people, and then denied their help, upon an inevitable necessity and present danger of the kingdom, that he might use his prerogative for his own supply, and the defence of his subjects."

Fourthly, To the Lord Conway, in a discourse, he had said, "That if the Parliament (meaning the last Parliament) should not grant a competent supply, that then the king was acquitted before God and man, and might use the authority put into his hands."

Fifthly, That he did say at the council-board, "If the Parliament should deny to help the King, he would take any other

way he could for his Majesty's service and assistance."

His expressions after the Parliament were two:

First, "That the Parliament had forsaken the King, and that the King should not suffer himself to be over-mastered by the frowardness, obstinacy, and stubbornness of his people."

Secondly, "That if his Majesty pleased to employ forces, he had some in Ireland that might serve to reduce this kingdom."

The proofs for the Scots particulars, were these:

First, The Lord Traquair, who was indeed very favourable to the Lord Lieutenant, and spake nothing to his disadvantage but what was skrewed from him; with much difficulty he told them, That when he gave in the demands, he heard him say, "That it was high time for the King to put himself into a posture of war;" but that first all the council of England said the same as well as he. 2dly, That it was a double supposition: 1. That the demands were truly given in. 2. That there was no other remedy left but arms, to reduce them.

Secondly, The Earl of Morton's testimony (being sick himself) was produced, and it was one and the same with the article.

Thirdly, Sir Henry Vane was examined, who declared, That he had heard the Lieutenant to advise the King to an offensive war, when his own judgment was for a defensive.

Fourthly, The testimony of the Earl of Northumberland was produced, which was the very same with Sir Henry Vane's.

Fifthly, The Treasurer of England deposed the same with Traquair.

Sixthly, One Beane, from Ireland, told, That he had known ships seized on there, but by whose procurement or warrant he knew not.

To

To the articles about England :

First, Sir Robert King and the Lord Ranelagh deposed the same, That Sir Robert King and the Lord Ranelagh had heard Sir George Ratcliff speak those words in the article.

Secondly, Sir Robert Barrington, of Sir George Wentworth.

Thirdly, The Primate's testimony (who is sick) was the same with the article.

Fourthly, The Lord Conway deposed the same with the article.

Fifthly, Sir Henry Vane deposed, He had heard those words spoken at the council-board.

For the words spoken after the parliament.

To the first, Sir Tho. Jermyne, Lord Newburg, Earl of Bristol, Earl of Holland, were examined. Bristol did inince the matter, but Holland's testimony was exprefs, because of the exceeding great love he carried the man.

For the last, which were the most dangerous speeches, (about reducing of this kingdom) there was only Sir Henry Vane's testimony ; who declared only thus, That he had heard ~~either~~ those words, or the like.

Here some of the Lieutenant's friends shewed themselves :

1. The Lord Sayil, who desired of Sir Henry Vane to know whether he said their, or this, or that kingdom ; and withal said, It was very hard to condemn a man for treason upon such petit circumstances.

2. The Earl of Southampton desired to know, whether Sir Henry Vane would swear those words positively or not. Sir Henry Vane said, positively either them or the like. The Earl replied, That under favour "those or the like" could not be positive.

3. The Earl of Clare desired to know what could be meant by this kingdom ; for his part (he said) he thought it meant of the kingdom of Scotland, to which the word

this might very well be relative, that kingdom being only mentioned in the preceding discourse : and that he was the more ready to be of that opinion, because he could not see by what grammatical construction it could be gathered from his words, that he meant to reduce England, which neither then was, neither is now (God be thanked) out of the way of obedience, nor upon rebellious courses.

They at last concluded the charge, That the words were so monstrous, that to aggravate them, was to allay them ; and therefore they would simply leave them to the judgment of the Lords.

The Lieutenant's reply was :

That though the heaping up of those articles had put him to a great confusion, yet he would endeavour to bring his answer into the best method he could ; and first he would reply to the proof, then add something in general for himself, in what a hard taking and lamentable condition he was to have his private discourses, his most intimate and bosom-friends search'd and sifted to the least circumstance, that he might seem guilty of that which, by God's assistance, he should never be.

To the Lord Traquair's, and the Deputy's depositions, he thought their proofs did not much stick upon him. For upon the suppositions, First, That the demands were true ; Secondly, That they were not justifiable ; Thirdly, That no other course could prevail : He could not see what other advice he could possibly give the King, than to put himself into a posture of war, especially seeing then there were frequent reports of the Scots invading or entering into England ; nor was he of any other mind than all the rest of the council-board.

For that of Morton's, he doth not positively remember the words, but if the demands were read, perhaps they would imply nothing less ; and if so, how otherwise to be answered but by the sword, all other means

means being first essayed, which is ever to be supposed?

For Sir Henry Vane's and Northumberland's testimony, about persuading of an offensive war, he said, He remembered it very well, and thought it as free for him to give his opinion for an offensive, as they for a defensive war. Opinions, said he, if they be attended with obstinacy or pertinacy, may make an heretick, but that they ever made a traytor, he never heard it till now; nor (under favour) should I be an heretick either, (said he,) for as I was then, so am I now, most willing to acknowledge my weakness, and correct my errors, whereof no man hath more, or is more sensible of them, than I myself: yet if that opinion of mine had been followed, it might perhaps have spared us some money (said he) and some reputation too, of which we have been prodigal enough.

For the last, about the ships, it proves nothing: but he would willingly confess, that some ships werethere detained, and that by himself, and his own direction, as Vice-admiral of Connaught, but it was at the command of the Lord Admiral the Earl of Northumberland; and produced his letter to that purpose.

To the English proof: He marvelled much how Sir George Ratcliff's words could be put upon him; Sir George (tho' alledged to be his bosom-friend, yet) had thoughts of his own, and might have some other thoughts in his bosom, and be to some other expressions than Sir George Ratcliff: No man (said he) can commit treason by his attorney; and should I, by my friend Sir George, as by a proxy?

For his brother: He never knew him before so rash; but that was nothing to him, except they could prove a nearer identity than nature had instituted, and that his brothers words and his were all one; yet withall he conceived that his brother's words might be very well understood of the Scots

conquering England, but not at all of the Irish; and so he wished with all his heart, that he had not spoken something which is like a prophecy.

To the Primate's testimony (with all reverence to his integrity be it spoken) he is but one witness, and in law can prove nothing: Add to this, (said he) that it was a private discourse between him and me, and perhaps spoken by me *tendandi gratia*; and how far this should be laid to a man's charge, let your Lordships judge.

Yea, this seems to me against humanity itself, and will make the society of men so dangerous and loathsome to us, that our dwelling-houses will be turned to cells, and our towns to desarts: That which God and nature (our tongues) have bestowed upon us [for the greater comfort of venting our own conceptions, or craving the advice of wiser and learned men] should become snares and burdens to us, by a curious and needless fear; yet if my words be taken, said he, with all that went before and followed after, I see no danger in it.

To the Lord Conway I may reply the same, with this addition, That it is a very natural motion for a man to preserve himself; every creature hath this privilege, and shall we deny it to monarchy, provided this be done in a lawful, though in an extraordinary way? This grain of salt must be added to season all my discourse.

To that of Sir Henry Vane, of offering my service to the King, I thank him for the testimony, and think he hath done me much honour thereby; but if he or any body else do suspect that his Majesty will employ me in unlawful enterprizes, I shall think them more liable to the charge of treason than myself.

To the subsequent testimonies, I shall not need to wrestle about them much, only the last of Sir Henry Vane's pinches, and lies sore upon me; but to that which the Earl of Clare (and I thank him for it) hath said already,

already, give me leave to add this, That the testimony of one man is not a sufficient witness, nor can a man be accused, much less condemned, of treason, upon this ; and for that read the stat. Hen, 7. 12. and of Edw. 6. 5.

Now my Lords (said he) to give you further satisfaction, I shall desire all the Lords of the council, which were then present (only to the number of eight) may be examined whether they heard these words or not ; for the Archbishop and Sir Francis Windebank they cannot be had : Sir Henry Vane gives the testimony, I deny it ; four only remain.

First, The Earl of Northumberland's testimony, which was read, had declared expressly, that he had never heard those words, nor any like them from the Lord Strafford, but he spake with great honour and regard to the kingdom of England.

Secondly, The Marquis Hamilton, who declared upon his oath, that he had never heard such words, but that he had heard the Lieutenant often say, that the King was to use his royal power *candide & caste*, that it would never be well for this kingdom, till the prerogative of the crown, and the privilege of the subject went in one pace together, and that parliaments were the happiest way to keep a correspondence between the King and people.

The very same was delivered by the Lord Treasurer, and the Lord Cottington.

Now, my Lords, you may marvel how these words rested only on the ears of Sir Henry Vane : But my Lords (said he) that I may remove all scruple from you, I will make it evident, that there was not the least intention that the Irish army should set a foot in England ; and then, I hope, you will conceive that I had no meaning to reduce this kingdom.

This he made clear by the testimony of Northumberland, the oaths of Marquis Hamilton, Lord Cottington, Lord Treasur-

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er, Sir Thomas Lucas, who only were privy to that matter.

For other of my words, my Lords (said he) I desire you would not take them by halves ; if so, who should be free from treason ? Certainly, if such a precedent take footing, Westminster-hall shall be more troubled with treason than with common-law ; look therefore to the antecedents and consequents of my speeches, and you shall find the state of the question clearly altered : the antecedents were upon an absolute or inevitable necessity, upon a present invasion, when the remedy of a parliament cannot be expected ; the consequents, for the defence of the kingdom, which accompts afterward to the parliament. The qualifications too in a lawful, convenient, and ordinary way, so far as the present necessity can permit. Add but these, and which of you are not of my mind ? Is the King endowed with no power from the Lord ? is he not publicus inspector Regni ? Stands it not him in hand to do something on present necessities ?

And that these were his words, he often proved, over and over again, by the Marquis, by the Lord Treasurer, Cottington, Sir Tho. Jermine.

My Lords, what I have kept to the last (said he) is this, and I would intreat you seriously to think of it : If a man's table, his bed, his house, his brother, his friends (and that too after they have given an oath of secrecy) are to be rack'd to find out treason against him, who never knew what it meant, what earthly man shall pass free from treason ? Let my misfortune, my Lords, be your advertisement ; your wife ancestors were glad to put bands and limits to this lion, treason ; if you give him the large scope of words to range into, he will at last pull you or yours all to pieces.

But, my Lords, I did never think till now, that matter of opinion should be objected as matter of treason.

For,

For, First, Opinions are free, and men may argue both pro and con, in all faculties, without any stain of reputation, otherwise all consultations would be vain.

Secondly, I may be of another judgment than I declare myself to be, of opinion perhaps to gain better arguments for the maintenance of my own grounds.

Thirdly, Many, and myself oftentimes, have propounded my opinion; yet upon hearing better judgments, have presently changed it.

Fourthly, We use to strain our opinions too high sometimes, that we may meet in a just moderation with those whom we conceive in the other extremity to be too low.

Fifthly, It is expressly commanded by the Stat. Hen. 6. 9. That though a man should say, the King is not lawful heir to the crown, and may be deposed, yet he is not to be charged with treason, but only with felony; and I hope, my Lords, those words are of a more transcendent and superlative nature, than any alledged by me so be spoken. But, my Lords (said he) lay it to your hearts, it must come to you, you and your posterity are they whom God and Nature, birth and education have fitted to beautify the royal throne, and to sustain the weighty affairs of the kingdom; if to give your opinions in political agitations shall be accounted treason, who will be willing to serve the King, or what a dilemma are you in? If, being sworn counsellors, you speak not your minds freely, you are convicts of perjury; if you do, perhaps of treason. What detriment, what incommodity shall fall to King and kingdom, if this be permitted? Which of you hereafter will adventure, yea dare adventure, so much as to help by your advice, unless you be weary of your lives, your estates, your posterity, yea, your very honour? Let me never live longer than to see this confusion; yea, I may say it, this inhumanity in England. For my part (my Lords) I here confess myself, I ever have, and ever shall speak my opi-

nion freely in any thing that may concern the honour and safety, either of my gracious King, or my dear country, though the sword be two-edged; fearing rather him that killeth the soul, than him whose power reacheth only to the body.

Nor do I see how I am culpable of treason, unless it be treason for not being infallible; and if it be so, my Lords, you have this rag of mortality before you, loaden with many infirmities; though you pull this into shreds, yet there is no great loss; yea, there may be a great gain, if by the same I may seem to have dared too far, to give a testimony to the world of an innocent conscience towards God, and a resolute loyalty towards my prince, [which have ever been my only pole-stars in the whole course of my life:] and if by spilling of mine, there be not a way found how to trace out the blood of the nobility (which I hope your Lordships will look to) there is no disadvantage at all suffered by the loss of me. (You have his very words as near as I could recollect.)

Tuesday was a day of rest.

Upon Wednesday, Whitlock charged thus: That the preceding articles were of so high a consequence, and of so transcendent a nature, that nothing wanted to make up the perfect measure of the most horrid treason, and monstrous attempt that ever, by a native, was intended against his King and country, but putting these designed projects into execution; which had undoubtedly happened to the ruin and subversion both of church and state, had not the clemency and goodness of the prince, and the piety and carefulness of the well affected peers timorously foreseen and prevented the same: That still the principles of tyranny and oppression had lodged within his bosom, and therefore had burst forth into these expressions and advices contained in the following articles; where first, in the twenty-fifth they charged him with three things.

First,

First, That he had advised the King to a rigorous and unlawful exaction of ship-money.

Secondly, That he had given counsel, That it the Sheriffs should deny their best endeavours and assistances to that effect, they should be sent for, and fined by the Star-Chamber, and imprisonment.

Thirdly, That when the Aldermen of London had in all humility represented the causes why the ship-money could not be collected amongst them, and had given in the reasons why they refused to give in a list of their names, within their city, who were able to afford the loan-money; he in a contemptuous and tyrannical manner, in the face of the council-board, had said to the King: "Sir, these men, because of their obstinacy and frowardness, deserved very well to be fined, ransomed, and laid by the heels; and it will never go well with your service, until some of them be hanged up for examples to others."

The Proofs were these.

First, The Bishop of London, Lord Treasurer, who declared, that he remembered the words very well, that the Lord Lieutenant had advised the King to cause the ship-money to be gathered in; but he remembered withal, that both himself and all the council had done the like; and that it was upon a present necessity, and defect of money for entertaining the army, which (the condition of the times considered) they all conceived, was by any means to be kept on foot.

Secondly, Alderman Wiseman declared, That upon an humble remonstrance made to the council-board, the city would take it ill, if a tax-roll should be delivered of their estates, who were thought able for the loan-money; the Lord Strafford said, They ought to be fined, ransomed, and

laid by the heels; but for words of hanging them up, he heard not at all.

Thirdly, The Earl of Berkshire declared that the Lord Strafford had said, That upon the refusal of such a service enjoined by the King's peremptory command, it was his opinion they might be fined.

Fourthly, Alderman Garway attested the preceding words; and withal added, that the Lord Lieutenant, to his best remembrance, had said, "It were well for the King's service if some of them were hanged up."

They closed the charge, That by such undutiful expressions he had injured the propriety of the subject, and had put such discontent upon the city, that they were the less willing upon any occasion, to concur for the advantage of the King's service.

The Lieutenant replied,

First, that though all the charge were in the most strict and rigid way of sense verified against him, yet he could not conceive by what interpretation of law it could be reached home to high treason; and to that common objection, (that the treason was not individual but accumulative) he replied, That, under favour, he thought, to that manner, were as much as to say, no treason at all. Because,

1st, That neither in statute law, common law, nor practice, there was ever, till this time, heard of such a matter as accumulative treason, or a treason by way of consequence; but that it is a word newly coined to attend a charge newly invented, such an one as never was before.

2dly, That treason was a thing of a simple and specific nature, and therefore could not be so by accumulation; but either must be so in some or either of the articles, or else could not be so at all.

3dly, He did conceive that it was against the first principles of nature, and false; therefore could not be so by accumulation, but either must be so in some or each of the

the articles, or else could not not be so at all. That an heap or accumulation should be, and not be, of homogeneous things; and therefore that which in its first being is not treasonable, can never confer to make up an accumulative treason. *Cumulus*, an heap of grain, so called, because every, or at least some of the individuals, are grain; if otherways, an heap it may be, but not an heap of grain. Just so, perhaps, these articles may make up an heap of felonies, oppressions, errors, misdemeanors, and such like; (and to the thing itself I shall give an answer, when under that name they shall be charged against me) but they can no ways confer to the making up of treason, unless some, at the least, be treason in the individual.

Secondly, That the testimonies brought against him were all of them single, not two one way; and therefore could not make faith in matter of debt, much less in matter of life and death; yea, that it was against the statute expressly, to impeach a man of high treason under the evidence of two famous witnesses, much less to adjudge and convince him upon attestation of one.

Thirdly, To the Lord Treasurer's testimony, he did with all his heart condescend unto it; but upon these grounds only, That there was a present necessity of money; that all the council-board had so voiced with him, yea, before himself, and he always thought it presumption in a man not to follow the wiser and more judicious; and that there was then a sentence of the Star-Chamber for the right of paying ship-money. For his part, he would never be more prudent than his teachers, nor give judgment against the Judges. And therefore he thought it not far amiss to advise the King for the collecting of that, which by law was his own, in such a present and urgent necessity. And although his opinion (and it was no more) had been amiss, he hoped; that

though, in case of religion, being attended with stubbornness and pertinacy, it might come home to heresy, yet in his case opinion could not reach so far as treason; unless it be treason for a man to speak his judgment freely, when he is upon his oath to do the same.

Fourthly, For the words about fining, he had already acknowledged them in his general answers to be true; but with these qualifications, That it was his opinion only; that it was upon the refusal (as he conceived) of a just service that he had spoken them, by no means to prejudice the citizens, but to make them the more quick and active in the King's service; that no ill-consequence happened upon them; that they were words might have been spared indeed, but innocently, though suddenly spoken, which he hoped might proceed from a man of such a hasty and incircumspect humour as himself, (made so both by nature and his much infirmity of body) without any mind at all to treason; and that if all cholerick expressions of that nature should be accounted treasonable, there would be more suits of that kind fly up and down Westminster-Hall than common law.

Fifthly, To those words attested by the Alderman, he positively denied them; and hoped they should never rise up against him in judgment, because the testimony was single, and not positive, but only to his best remembrance; and that it was exceeding strange that no man, neither of the council, or other Aldermen, were so quick to observe them, but only Alderman Garway; which he thought sufficient to nullify that single testimony, except he could demonstrate himself to have some rare and singular faculty of hearing.

In the close, he desired the Lords, from his misfortune, to provide for their own safety, and seriously to consider what a way was chalked out to ruin them both in their
lives

lives and estates, if for every opinion given in council, or words suddenly or hastily spoken, they (who are born to wield the great affairs of the kingdom) should be arraigned and sentenced as traitors.

Then they went to the 26th article, and charged thus :

That the Lord Strafford, having by his wicked advices exhausted the King's Treasury, did also counsel him,

First, To imbase the coin by an alloy of copper-money.

Secondly, To seize upon all the bullion in the mint.

Thirdly, That in discourse with some of the Aldermen about that business, he had said the city was more ready to countenance and relieve the rebels than the King; and that the King of France did use to manage such businesses, not by treaties or requests, but by sending forth his commissaries to take account of mens estates, accompanied with troops of horses.

The proofs were;

First, Sir Thomas Edwards, who declared, That in discourse with the Lord Strafford, having remonstrated unto him that their goods were seized on beyond seas, because of the money taken out of the mint, he told him, "That if the Londoners suffered it, it was deservedly, because they had refused the King a small loan of money upon good security; and that he thought them more ready to help the rebels than the King.

Secondly, Mr. Palmer declared that he spake something about the King of France, but whether with relation to England, or not, he did not remember.

Thirdly, Sir William Parkise attested in the same words; and withal, that the Lord Cottington was then present, and could declare the whole business.

Fourthly, Sir Ralph Freeman declared, That in a discourse with the Lord Strafford he had said that the servants in the Mint-

House would refuse to work the copper-money; and he replied, "That then it were well to send those servants to the House of Correction."

They closed the charge, that by such unedutiful counsel and words, he had given more than sufficient proof of his design and purpose to subdue this kingdom, and subvert the fundamental laws and privileges of the same.

The Lieutenant's reply :

First, That he expected some proofs about the two first particulars, but did hear of none; and that it was no small disadvantage to him to be charged with a great many odious crimes by a book, printed and flying from hand to hand through the whole kingdom, yet when they came to prove, there should be no such thing laid against him.

Secondly, About the speeches : He ingenuously confessed that some such thing might perhaps have escaped the door of his lips, when he saw their backwardness to his Majesty's service; and as the times were then conditioned, he did not think it much amiss to call that faction by the name of rebels; but yet he thought he had abundantly satisfied for that oversight (if it was any) at York : For having understood there, that the city of London were willing to make a loan of money, he there, before the great council of the peers, expressed himself to this sense, "That the Londoners had sufficiently made up all their delays hitherto by their act, that the King was obliged to their forwardness; and that he himself should be as ready to serve them as any poor gentleman in England." About the other words, he said, That being in conference with some of the Londoners, there came at that time to his hands a letter from the Earl of Leicester, then at Paris, wherein were the Gazettes inclosed, reporting that the Cardinal had given some such order, as to levy money by forces. This, he

he said, he only told the Lord Cottington, standing by, without the least application or intention concerning the English affairs. Cottington, being examined upon this, declared the same in the same manner.

Thirdly, to Sir Ralph Freeman, he said, That his testimony did not concern the charge at all; nor did he think any thing amiss in it, though he had said it. If the servants of the mint refused to work according to directions, they did deserve the house of Correction; nor was it treasonable to say the King might use that house for the correction of his servants, as well as any man in the city for theirs.

Fourthly, He said that there was no great likelihood that he had committed real acts of treason, when his adverse party was content to trifle away so much time about words; neither was there any treason in them, though they had been fully verified, and therefore in that (as in all other articles) he reserved a power for his counsel to dispute in matter of law.

They went to the 27th article, and charged thus; That immediately after his appointment to be Lord Lieutenant to the army here in England, he shewed what principles of arbitrary government lurked within his bosom; for by his own immediate authority, without and against law, he had laid an impost of money upon the King's subjects. Where they mention three particulars:

First, That he had imposed 8d. per diem upon the county of York, for entertaining the Trained Bands there one whole month.

Secondly, That he had sent out warrants for collecting the same; and threatened to imprison such as should refuse to pay.

Thirdly, That he said, "That it was a crime nigh to the crime of high treason, not to pay the same."

Fourthly, They added, That in his general replies he had brought two things for

his defence: 1st, That this money was freely and voluntarily offered by those in Yorkshire. 2dly, That the great council of the Peers had notice of the same.

To the first they answered, That a petition was indeed preferred by the Yorkshire men, and a month's pay offered; but that the Lord Strafford had refused to present the same upon this exception only, Because in the same they had petitioned for a parliament: Whereby he evidently declared what little inclination he had to that way.

To the second, They appealed to all the Lords present, whether any such order did pass before the council of the Peers at York.

The proofs were:

First, A warrant issued by Colonel Penynman for this money, and another by Sir Edward Osborne.

Secondly, Mr. John Burrowes, who declared that he was Clerk to the great Council, but did remember of no order; and withal added, that it might have passed at that time, when he attended at Rippon.

Thirdly, Mr. Dunston, who declared that he had known that money levied by some musqueteers.

Fourthly, By Sir William Ingram, who declared that he had heard the Lieutenant say, "That to refuse the same, came nigh to the crime of high treason."

They concluded the charge, That by these particulars it was more than evident what unhappy purposes and traitorous designs he had to subdue this kingdom, and subvert the fundamental laws and privileges.

The Earl replied, First, To the petition, That it was a true petition, drawn up by the Yorkshire gentlemen; and as true, that he had refused to present the same, Because of that clause about the Parliament. But the matter was thus: At his Majesty's coming to York, it was thought necessary for

for the defence of that county to keep the Trained Bands on foot, because the enemy was upon the borders; and therefore the King directed him to write to all the freeholders in Yorkshire, to see what they would do for their own defence.

The time and place were designed by the King; but the night before the meeting, a small number convented, and in a private and factious way did draw up that petition. Upon the morrow, at their appointed dyet, in presence of the whole number, the petition was presented to him; where he did advise them to leave out that clause, and that because he knew the King, out of his own gracious disposition, had intended to call a parliament, which he desired should be freely done, than upon the constraint and importunity of petitions; moreover, it would seem a mercenary thing in them, at one and the same time, to offer a benevolence, and withal to petition for his favour. Upon this remonstrance they were all willing to recall the petition, and directed him by word of mouth to offer unto the King the month's pay in their names; which he did accordingly, in the presence of forty of them, to their no small advantage.

This he proved by Sir William Pennyman, Sir Paul Neale, Sir George Wentworth, Sir William Savil, Sir Thomas Danby, who all of them declared as much in ample terms; and withal added, That nothing was done upon better grounds of necessity, and obedience than the offer of that money, and that they never had heard any man grudge against it to this time.

For the second, about the council of peers, he alledged that he never made mention of any order of theirs; but he remembered very well it was twice propounded before them, that the King had approved it at that time a just and necessary act, and none of the council had contra-

dicted it, which he conceived as a tacit approbation, and an order in equivalence.

But though that had not been, yet there was nothing done in the business, but at the special desires of the gentlemen themselves, and for their necessary defence and protection; yea, though he had done it by himself alone, yet he conceived he had so much power by his commission, (causing the commission to that effect to be read) That albeit he should mistake his commission, and do some inferior act beyond it (because military proceedings are not always warranted by the common law) yet it should not be imputed as an act of treason to him. (And to this effect read a statute of the seventh of Henry the Second).

To the proofs; First, Colonel Pennyman's warrant, or Sir Edward Osborne's, it nothing concerned him; and he doubted not but these worthy gentlemen could justify their own act, and that he had enough to do to answer his own misdemeanors.

Secondly, For Sir John Burrowes, he was at Rippon when that proposition was made.

Thirdly, That as the warrant, so neither the execution troubled him at all.

Fourthly, For Sir William Ingram, he was but a single testimony. And that such an one too, as he could produce an evidence to testify he had mistaken himself in his testimony upon oath, if it were not to disadvantage the gentleman.

He concluded, That he had done nothing in that business but upon the petition of that county, the King's special command, the connivance at least of the great council, and upon a present necessity, for the defence and safety of the county.

And so much for Wednesday.

Upon Thursday the committee for the charge declared that they had done with all the articles, and were content to waive the last, for reasons best known to themselves; only Sir Walter Earles added, That he had some

some observations to bring forth upon the two and twentieth article, which he conceived might do much to prove the Earl of Strafford's designs for landing the Irish forces in England.

And they were, First, That in his commission he had power to land them in Wales, or in any part of England, or in Scotland; which were altogether superfluous, unless there had been some purpose for the same.

Secondly, That within two days before the date of the commission, letters were sent to the Lord Bridgewater and Pembroke from Sir Francis Windebank to assist the Earl of Worcester in levying forces for the King's service; and these might be supposed to have intended a joining with the Irish.

Thirdly, That the Lord Ranelagh, at the raising of the Irish army, did fear such a design as this.

Fourthly, That the Town of Ayre in Scotland, where the Lord Strafford pretended he would land those forces, was fortified with a bulwark, a garrison, and block-house, which would prohibit landing there; that the Earl of Argyle's bounds were divided thence by the sea, and that the bar or entry into the town was very dangerous and shallow.

The proofs were only the reading of the commission granted to the Lord Strafford.

The Lieutenant replied, First, That his commission was the same *verbatim* with Northumberland for England, and that it was drawn up by the council-board here, and sent over unto him; so no more design in him than in the gentlemen of the English army, nor no larger than that was put upon him.

Secondly, That this was the first time he heard of any such letters, nor did they concern him more than any of the house.

Thirdly, That he was not bound to purge the Lord Ranelagh from all his fears,

and that he had his own fears too, which God forbid should be evidence of treason against any man whatsoever.

Fourthly, That it seemed, the gentleman had better information from that kingdom than himself; yet he would be confident to say, at Ayre, there was never such a thing as a block-house or garrison. But to remove all scruples, (for indeed the road or landing place is not there safe) he declared that it was his intention to have landed some miles above Ayre, and made only his magazine of that town.

To the Earl of Argyle's bounds, he hoped the gentleman knew they came not on foot out of Ireland, but had ships to waft and transport themselves, and that one of his prime houses (Rosneth) was within some few miles of the same Frith.

The Lord Digby finding Sir Walter Earles on ground, did handsomely bring him off, and told the Lords, That all their proofs for that article were not yet ready, and that this was a superfoetation only of the charge; and that in such a business as the plotting of treason, they must be content sometimes with dark probabilities.

Then Mr. Glyn desired the Lieutenant to resume his defence, that they might give a repetition of their charge, and so close the process so far as concerned the matter of fact.

He replied, That in his case all slackness is speed enough; the matter touched him narrowly, even in his life and estate, yea, in that which he esteemed above them both, his honour and posterity; and therefore he confessed he had no desire to ride post in such a business. That he knew the gentlemen of the bar, if they were in his case, would think the time little enough, except their more able judgments could sooner dispatch the matter in hand; and therefore he humbly intreated, that that day might be granted to him for strengthening himself, and recollecting his thought and spirits, and

and to-morrow he would be ready with his last replies for himself: which after a little ceremony and contestation, was condescended unto by the House of Commons.

Upon Friday morning, about eight of the clock, the Lieutenant of the Tower, and my Lord's chamber-groom came to the hall, and gave information to the house upon oath, That the Lord Strafford was taken with an-exceeding great pain, and fit of the stone, and could not upon any conditions stir out of his bed.

Mr. Glyn replied, That it was a token of his wilfulness, not his weakness, that he had not sent a doctor to testify the same.

The Lord Steward made answer, That a doctor could not be had so soon in a morning, nor was it possible for any physician to give a certain judgment concerning a man's disability by the stone, because there are no outward symptoms that appear.

Mr. Glyn excepted, That if he did not appear upon Saturday morning, he should lose the privilege to speak in his own defence afterwards, and they permitted to proceed.

The Lord Steward replied, That the Lords had appointed four of their number to go to the Tower, and learn the just cause of his stay; and if by any means he were able, he should be obliged to come then; if not, humanity and common equity would excuse him.

In the afternoon it was reported that he was dead, of which there can be no better reason given than the humour and genius of the times, that dally with nothing oftener than untruths and calumnies: and certainly there are many men of shallow understandings and weak affections, who either will not, or cannot understand the gentleman's worth; but out of fearful and needless apprehensions are so desirous to bear of his ruin any way, that their busy

tongues will dare to anticipate the stroke of justice.

Mr. Glyn proffers new proofs concerning the two and twentieth article.

Upon Saturday morning he presented himself at the bar, where he expected nothing but repetitions of charges and defences; but mean while Mr. Glyn proffers some new proofs concerning the two and twentieth article, which the noble Lord refused, alledging the process was closed. Mr. Glyn answered, The process is not closed, as long as the business stands unrepealed; and that it did not become a prisoner at the bar to prescribe a method of proceeding to the House of Commons in England.

It was answered by the Lord-Lieutenant, That he thought it stood him in hand as nearly to maintain his life, as it did any to pursue him for it; yet he was willing they should bring in new proofs, provided that he might have time to make new replies, and withal use some new witnesses in some articles that concern his justification.

The Lord Newark, upon these motions, desired the house might be adjourned; after two hours stay, and a hot conflict upon the Lords, they returned, and the Lord Steward commanded the order to be read, which consisted of two articles:

First, That as it was granted unto them to bring in proofs concerning the two and twentieth article; so it was to the Lord Strafford to make his replies, and use his witnesses concerning the same.

Secondly, That if they went to no more articles, no more should the Lord Strafford; but if they did, that he might pitch upon any one article as he pleased.

The House of Commons presently declined all other articles, and conceived the order expressly for them, restraining him from all other articles, except that only.

He conceived the order was for him, and said, That seeing they had picked out their article,

article, it was against all common equity to tye up his hands, and not admit of a common rule for them both. They replied, That when the article was canvassed, they reserved witnesses till another time. He answered, That he had done the same upon every article. They replied, That the house had refused his reservation. He answered, Nor had they passed an order for theirs.

Upon this new contestation the house rose again, and was adjourned. It is supposed that the House of Commons had the better ground, because they had particularly named their witnesses in their reservation; the Lord Strafford not so; they pressed but one article, he many. But such was the pleasure of the Lords, that though the matter did not deserve to be much stood upon, yet after two hours vehement agitation of the business in the upper house, they returned, and the order was in his favour to this effect:

First, That both of them should wave their new proofs, and go immediately to that which follows.

Secondly, If they would not do so, the Lords conceived themselves common judges to both, and therefore would not deny Strafford the liberty of pitching upon what article he pleased, as they had done.

Thirdly, That both of them should name their witnesses at the bar instantly.

The Commons were much grieved at this, yet desired him to nominate his witnesses, if he would make any benefit of the order. He answered, That he would nominate after them, because they were first in order. They replied, That he knew their article, they not his. He said, He was to bring proofs about the second, fifth, thirteenth, and the fifteenth articles, and did desire them that they would now proceed to nomination.

But they told him, they could not embrace the order without advice of the whole house. Then on a sudden a mighty noise

of the whole house followed, "Withdraw, withdraw!" and was in so uncouth and tumultuous a confusion, that it produced both admiration and fear in the beholders, wherein we might easily feel the pulse of a distempered state. Both the houses brake up, not appointing so much as the next diet; each man's countenance spake anger and discontent, and nothing sounded in our ears all Sunday but terrors and affrightments of a present division and breach between the two houses; That the house of commons would declare him a traytor, and all such Lords too as were his adherents; that he should be no more heard in public, that (though parties, and not his peers) they would vote in his sentence, That a bill of attainder should presently be drawn up against him, and that nothing should content them but present execution.

Big words flew up and down all Monday. That whole day was spent in a conference betwixt the houses, without any meeting in the hall; but the Lords (who had learned, as it seems, to foresee their own ruin by his misfortune, and now conceive that monarchy and nobility are of such identity, that one and the same is the diminution of both) kept fast to their conclusion, and would not pass from their order, notwithstanding all the many dangers represented: so that the House of Commons were contained at last to give way, and embrace the first part of the order, by waving witnesses on both sides.

This hath been no small discouragement to his enemies; for a more real demonstration of his party amongst the Lords could not have been shewn.

Upon Monday, some of the Lords went so high in their heat, as to tell the House of Commons, That it was an unnatural motion, for the head to be governed by the tail; That they hated rebellion as bad as treason; That the same blood that ennobled

nobled their ancestors, did move also in their veins, and therefore they would never suffer themselves to be suppressed by a popular faction.

After a great deal of storm, all was (as well as might be) soddered up again, and Tuesday appointed to be the day for the Lieutenant to resume his defences, and they their charge, without any more proof to be used on either side.

Upon Tuesday, the Lord Steward at the entry told them, the Lords had ordered that both their testimonies should be waved, that they should proceed immediately to what followed, so that that day might put an end to what concerned the matter of fact.

The Lord-Lieutenant replied, That in all humility and obedience he would submit himself to that, or any other their decrees whatsoever, though it should reach as far home unto him as his own life; but withal humbly begged, That if hereafter he should be troubled (for they were to speak last) with new matter, or with supplemental proof, he might have leave to speak something in his own defence.

The Lord Steward answered, It was all the reason in the world.

The Lieutenant went on thus:

My Lords,

THIS day I stand before you charged with high treason, the burden is heavy, yet far the more, in that it hath borrowed the patrociny of the House of Commons; if they were not interested, I might express a no less easy, than I do a safe issue and good success to the business: but let neither my weakness plead my innocence, nor their power my guilt. If your Lordships will conceive of my defences, as they are in themselves, without reference to either, (and I shall endeavour so to present them) I hope to go away from hence as clearly justified, as I am now in the testimony of a good conscience by myself. My Lords,

I have all along my charge watched to see that poisoned arrow of treason, that some men would fain have to be feathered in my heart, and that deadly cup of wine, that hath so intoxicated some petty mis-alleged errors, as to put them in the elevation of high treason; but in truth it hath not been my quickness to discern any such monster yet within my breast, though now perhaps, by a sinistrous information, sticking to my clothes. They tell me of a twofold treason, one against the statute, another by the common law; this direct, that consecutive; this individual, that accumulative; this in itself, that by way of construction.

For the first, I must and do acknowledge, that if I had the least suspicion of my own guilt, I would spare your Lordships the pains, cast the first stone at myself, and pass sentence of condemnation against myself: and whether it be so or not, I refer myself to your Lordship's judgment and declaration. You, and only you, (under the favour and protection of my gracious master) are my judges; under favour, none of the Commons are my Peers, nor can they be my judges. I shall ever celebrate the providence and wisdom of your noble ancestors, who have put the keys of life and death (so far as concerns you and your posterity) into your own hands, not into the hands of your inferiors; none but your own selves know the rate of your noble blood, none but yourselves must hold the ballance in dispensing the same.

I shall proceed in repeating my defences, as they are reducible to these two main points of treason: and for treason against the statute, (which is the only treason in effect) nothing is alledged for that, but the fifteenth, two and twentieth, and twenty-seventh articles. [Here he brought the sum of all his replies made to these three articles before, and almost in the same words as before; only that testimony of Sir Henry

Henry Vane's, because it seemed pressing, he stood upon it, and alledged five reasons for the nullifying thereof.]

First, That it was but a single testimony, and would not make faith in a matter of debt, much less in a matter of life and death; yea, that it was expressly against the statute to impeach (much less to condemn) him upon high treason, under the testimony of two famous witnesses.

Secondly, That he was dubious in it, and expressed it with an "as I do remember, and such or such like words."

Thirdly, That all the council of eight, except himself, disclaim the words; as if by a singular providence they had taken hold of his ears only.

Fourthly, That at that time the King had levied no forces in Ireland, and therefore he could not be possibly so impudent as to say to the King, "That he had an army there, which he might employ for the reducing this kingdom."

Fifthly, That he had proved by witnesses beyond all exceptions (Marquis Hamilton, the Lord Treasurer, the Earl of Northumberland, Lord Cottington, Sir William Pennyman, and Sir Arthur Teringham) that there was never the least intention to land those forces in England.

[He went on:]

So much for the articles that concern individual treason.

To make up the constructive treason, or treason by way of accumulation, many articles are brought against me, as if in a heap of felonies or misdemeanours (for in their conceit they reach no higher) some prolific seed, apt to produce what is treasonable, could lurk. Here I am charged to have designed the ruin and overthrow both of religion and state. The first seemeth rather to have been used to make me odious than guilty, for there is not the least proof alledged concerning my confederacy with the popish faction, nor

could there be any indeed; never a servant in authority beneath the King my master was ever more hated and maligned by those men than myself, and that for an impartial and strict executing of the laws against them.

Here your Lordships may observe, that the greater number of the witnesses used against me, either from Ireland or from Yorkshire, were men of that religion: but for my own resolution (I thank God) I am ready every hour of the day to seal my due affection to the church of Rome, with my dearest blood.

But, my Lords, give me leave here to pour forth the grief of my soul before you: these proceedings against me seem to be exceeding rigorous, and to have more of prejudice than equity, that upon a supposed charge of my hypocrisy or errors in religion, I should be made so monstrously odious to three kingdoms; a great many thousand eyes have seen my accusations, whose ears shall never hear, that when it came to the upshot I was never accused of them. Is this fair dealing amongst Christians? But I have lost nothing by that: popular applause was ever nothing in my conceit; the uprightness and integrity of a good conscience was, and ever shall be, my continual feast; and if I can be justified in your Lordships judgments from this grand imputation, (as I hope I now am, seeing these gentlemen have thrown down the bucklers) I shall account myself justified by the whole kingdom, because by you, who are the epitome, the better part, yea the very soul and life of the kingdom.

As for my design against the state, I dare plead as much innocency here, as in matter of my religion: I have ever admired the wisdom of our ancestors, who have so fixed the pillars of this monarchy, that each of them keep a due proportion and measure with the other, and have so hand-

somely

timely tied up the nerves and sinews of the state, that the straining of any one may bring danger and sorrow to the whole economy. The prerogative of the crown, and the propriety of the subject, have such mutual relations, this takes protection from that, that foundation and nourishment from this: and as on the lute, if any one string be too high or too lowly wound up, you have lost the harmony; so here the excess of a prerogative is oppression; of pretended liberty in the subject; disorder and anarchy. The prerogative must be used as God does his omnipotency, upon extraordinary occasions; the laws (answerable to that *Potentia ligata in Creaturis*) must have place at other times. And yet there must be a prerogative, if there must be extraordinary occasions; the propriety of the subject is ever to be maintained, if it go in equal pace with this: they are fellows and companions, that are and ever must be inseparable in a well governed kingdom; and no way so fitting, so natural to nourish and entertain both, as the frequent use of Parliaments: by those a commerce and acquaintance is kept betwixt the King and subject. These thoughts have gone along with me these fourteen years of my publick employments, and shall God willing to my grave: God, his Majesty, and my own conscience, yea, and all those who have been most accessory to my inward thoughts and opinions, can bear me witness that I ever did inculcate this, That the happiness of a kingdom consists in a just poize of the King's prerogative and the subject's liberty; and that things would never go well, till they went hand in hand together.

I thank God for it, by my master's favour, and the providence of my ancestors, I have an estate, which so interesteth me in the commonwealth, that I have no great mind to be a slave, but a subject; nor could I wish the cards to be shuffled over

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again, upon hopes to fall upon a better set: nor did I ever nourish such base mercenary thoughts, as to become a pander to the tyranny and ambition of the greatest man living. No, I have, and ever shall aim at a fair, but a bounded liberty; remembering always that I am a freeman, yet a subject; that I have a right, but under a monarch. But it hath been my misfortune now, when I am grey-headed, to be charged by the mistakers of the times, who are now so highly bent, that all appears to them to be in the extreme for monarchy, which is not for themselves. Hence it is, that designs, words, yea intentions, are brought out for real demonstrations for my misdemeanors: such a multiplying-glass is a prejudicate opinion!

The articles contain expressions and actions: my expressions either in Ireland or England, my actions either before or after these late stirs.

[In this order he went through the whole charge, from the first article to the last, in an excellent method, and repeated all the sums and heads of what was spoken by him before; only added in the twenty eighth article, If that one article had been proved against him, it contained more weighty matter than all the charge besides; and it had not only been treason in him, but also villany, to have betrayed the trust of his Majesty's army. Yet because the gentlemen had been sparing (by reason of the times) to insist upon that article, though it might concern him much, he resolved to keep the same method, and not utter the least expression that might seem to disturb the happy agreement intended, though he wished the same might deceive his expectation: only thus much he admired, how himself, being an incendiary against the Scots in the twenty third article, is now become their confederate in the twenty eighth article; or how he could be charged!

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for betraying Newcastle, and for fighting with the Scots at Newborne too, seeing with them was no possible means for betraying the town, but to hinder their passage thither.

That he never advised war farther, than (in his poor judgment) concerned the very life of the King's authority; and the safety and honour of his kingdoms: nor saw he what advantage could be made by a war in Scotland, where nothing could be gained but many hard blows. For his part, he honoured the nation, but he wished they might be ever under their own climate, and had no desire they should be too well acquainted with the better soil of England: but he thought that article had been added in just, or as a supernumerary; and he very little suspected to be reckoned a confederate with the Scots, and wished (as he hoped it was) that every Englishman were as free from that imputation as himself: closing his defence with this speech.

My Lords, You see what may be alleged for this constructive, rather destructive treason. For my part, I have not the judgment to conceive that such a treason is agreeable either with the fundamental grounds of reason or law: not of reason, for, how can that be treason in the lump or mass, which is not so in any of the parts? Or how can that make a thing treasonable, which in itself is not so? Not of law, since neither statute, common law, nor practice, hath from the beginning of this government ever mentioned such a thing: and where, my Lords, hath this fire, without the least appearance of any smoke, lien hid so many hundred years, and now breaks forth into a violent flame to destroy me and my posterity from the earth? My Lords, do we not live by laws, and must we be punished by laws before they be made? Far better were it to live by no laws at all, but to be governed by those characters of discretion and virtue,

that nature hath stamped in us, than to put this necessity of divination upon a man; and to accuse him of the breach of law, before it be a law at all. If a waterman upon the Thames split his boat by grating upon an anchor, and the same have a buoy appending to it, he is to charge his own inobservance; but if it hath none, the owner of the anchor is to pay the loss.

My Lords, If this crime, which they call arbitrary treason, had been marked by any discerners of the law, the ignorance thereof should be no excuse for me; but if it be no law at all, how can it in rigour or strictness itself condemn me? Beware you do not awake these sleeping lions, by the searching out some neglected motheaten records, they may one day tear you and your posterity in pieces: it was your ancestors care to chain them up within the barricadoes of statutes; be not you ambitious to be more skilful and curious than your forefathers in the art of killing:

My Lords, it is my present misfortune, for ever yours; and it is not the smallest part of my grief, that not the crime of treason, but my other sins, (which are exceeding many) have presented me before this bar; and except your Lordships' wisdoms provide for it, it may be, the shedding of my blood may make way for the tracing of yours: You, your estates, your posterities, lie at the stake. If such learned gentlemen as these, whose tongues are well acquainted with such proceedings, shall be started out against you; if your friends, your counsel denied access unto you; if your professed enemies admitted to witness against you; if every word, intention, or circumstance of yours, be sifted and alledged as treasonable, not because of a statute, but because of a consequence, or construction of lawyers pieced up in a high rhetorical strain, and a number of supposed probabilities; I leave it to your Lordships' consideration, to foresee what may be the
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issue of such dangerous and recent precedents.

These gentlemen tell me they speak in defence of the common-wealth, against my arbitrary laws; give me leave to say it, I speak in defence of the common-wealth, against their arbitrary treason: for if this latitude be admitted, what prejudice shall follow to King and country, if you and your posterity be by the same disabled from the greatest affairs of the kingdom? For my poor self, were it not for your Lordships interest, and the interest of a saint in heaven, who hath left me here two pledges on earth, [at this his breath stopt, and he shed tears abundantly in mentioning his wife, which moved his very enemies to compassion] I should never take the pains to keep up this ruinous cottage of mine; it is loaden with such infirmities, that in truth, I have no great pleasure to carry it about with me any longer; nor could I ever leave it in a better time than this, when I hope the better part of the world would perhaps think, than by this my misfortune. I had given a testimony of my integrity to God, my King, and country. I thank God, I count not the afflictions of this present life comparable to that glory, which is to be revealed in the time to come.

My Lords! my Lords! my Lords! Something more I had to say, but my voice and spirits fail me: only I do in all humility and submission cast myself down before your Lordships feet, and desire that I might be a pharos to keep you from shipwreck; do not put such rocks in your own way, which no prudence, no circumspection, can eschew or satisfy, but by your utter ruin. And whether your judgments in my case (I wish it were not the case of you all), be either for life or death, it shall be righteous in my eyes, and received with a *Te Deum laudamus*: (and then he lifted up his eyes, and said) *In te Domine confido, ne confundar in eternum.*

This he spake with an inimitable life and grace. You have his very words as near as I can remember; only with so much loss and detriment as hath perished by transcribing the copy from his own mouth. But you desire impartiality, and indeed you have it, and with some grains too of allowance; for I was so afraid of my own affection to the gentleman, that I rather bowed to the other extremity, and therefore have set down his defences rather to his disadvantage by my rude pen, than in the native colour, to his eternal glory, and the confusion of his enemies.

The repetition of the charge did not spend much time; they proceeded orderly article by article, in the very same words and matter as before; only there were some remarkable flashes that passed from Mr Glyn (who was the man) in the time of their handling.

He told them, That he should represent the Lord Strafford as cunning in his replies, as he had been crafty in his actions; that he waved all that was material, and insisted only upon the secondary proofs; that it was more than evident throughout all his charge, how he had endeavoured to bring in an arbitrary and tyrannical form of government over the lives, lands and liberties of the King's subjects; yea, had exercised a tyranny over their consciences too, by the oath administered in Ireland: and though his malicious designs had taken no effect, yet no thanks to him, but to the goodness of the King, and the vigilancy of the peers, Had they pleas'd, it had been too late to have punish'd him; for no rule of law had been left whereby to censure him, after the death and expiration of the laws. And if the intention of *Guido Faux* might be thought treason, though the house was not blown up, then this intention of his may admit the same censure.

He closed: That throughout all his defences he had pretended either warrants from

from the King, or else the King's prerogative; and what was this else but to draw up a cloud, and exhale the vapour for the eclipsing of the bright sun, by the jealousies or repinings of his subjects, if the strength of his piety and justice shou'd not dispel all these mists, and send them down to their original? That the very standing and falling of these three kingdoms stood upon this process; all of which do conceive their safety so far interested in his just punishment, that no settling of their peace or quiet could be expected without this: That they hoped the law should never protect him, who had gone about to subvert all law; nor the nobility (who had the same blood moving in their veins) by submitting themselves to his base tyranny, lose that privilege and liberty, which their ancestors had bought with their dearest lives. Though there was no statute for this treason, was it the less monstrous? for there was none for so many hundreds of years that durst ever venture upon such insolencies, to occasion such a statute; and were not the fundamental grounds, rules and government sufficient to rise up in judgment against him, without the making a particular statute? This he said he left to the dispute of the law; and concluded, that seeing they had found out the Jonah, who these many years had tossed and hazarded the ship of the commonwealth with continual storms and tempests, there could be no calms expected, but by casting him out into the seas; which, in all justice, they must, and do expect from their hands, who are intrusted by the body of the kingdom to do the same. The aggravation of the offence, he said, he had left to Mr Pym, who here spake that speech which is now in print.

It was a sport to see how Mr Pym in his speech was fearfully out, and constrained to pull out his papers, and read with a great deal of confusion and disorder, before he could recollect himself; which failing

of his memory was no small advantage to the Lieutenant: because by this means the house perceived it was a premeditated flash, not grounded upon the Lieutenant's last answer, but resolved on before, whatsoever he should say for his own justification. But the Lieutenant was not suffered to reply a word, either to Glyn or Pym, because the last word must be theirs. And so with Tuesday ended the matter of fact.

On Thursday the dispute in law is expected.

Upon Wednesday we were big with expectation for the matter of law, having done before with matter of fact; but it seems the House of Commons had perceived a great defection of their party, and a great increase of the Lord Strafford's friends in both the Houses, occasioned by his insinuating, honest, and witty defences, and therefore resolved of no more hearing in publick: therefore it was thought upon by his accusers to draw up a bill of attainder, and present the same to the Lords; whereby, First, the matter of fact should be declared to have been sufficiently proved; and then in the matter of law, that he had incurred the censure of treason, for intending to subvert the fundamental laws of the kingdom: for though (said they) he cannot be charged by letter of statute of the twenty-fifth of Edward the III^d, yet he is within the compass of the *salvo*, whereby it is provided, That the King and Parliament hath power to determine what is treasonable, and what not; and that they were confident the Lords would ratify and approve of this bill of theirs, and give judgment accordingly.

The motion was stoutly opposed by three great lawyers, (all Members of the House) Selden, Holborn and Bridgeman, who made it manifest, that the salvo of 25 Edward III^d was repealed, and that no man could now be convicted of treason, but by the

the letter of that statute : but being put to voice, it was carried for the bill, and a committee appointed for to draw it up.

This gave occasion of much talk abroad, and they who were otherwise the Lord Strafford's enemies, could not find equity enough in the bill of attainder. Some could not conceive what difference imaginable was betwixt the bill and the charge presented before ; for in the charge he was accused of treason, and the bill (though they had no legislative power) seemed nothing but an affirmation of the same. Others (who would have the bill understood of a definitive sentence, because it was consecutive to the proofs) were not satisfied, but that it was against all practice, that the Commons should give sentence upon the death of a Peer ; and that it was against common equity too, that the party accusant should give the judgment, if the complainers were admitted to be judges. A third sort gave it out, That this was no sentence against the Lord Strafford, but only a passing of a new act of Parliament, about a matter not hitherto declared treasonable : but yet these doubted, that by declaring the matter of fact to be approved, and applying the censure to it, in reference to the Lord Strafford, it would ever be thought a sentence against him, to blemish his own fame, and the blood of his posterity. Moreover, that if they were about to make a new act, it were strange to punish a man for the breach of such a statute as was not yet extant *in rerum natura* ; which should in reason refer only to future obedience : and (what is more strange) though there were a new statute, yet by what authority the Parliament hath, or could declare any individual or accumulative act, which is already, to be treasonable ; which must be treason by virtue of a statute, or else no treason at all. Now there is none can be brought, except the twenty-fifth of Edward the III^d, whereof

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the letter of that statute cannot, by their own confession, nor was not so much as once alledged against the Lord Strafford : and for the *salvo* or *proviso* (which they mainly insisted on) the same stands repealed by two posterior acts of Parliament.

You have the mutterings of all sorts of people.

The Lords fearing the proceedings, as a beaten path, trodden out to the ruin of their own lives and estates, told the house of Commons in their conference upon Thursday, That they would go on the same way they did already ; and, according to the order of the house, give full audience to the Lord Strafford's counsel in matter of law, and that they themselves, as competent Judges, would by themselves only give sentence in the cause ; nor was there any other course suitable to the practice and statutes of the kingdom, the safety of the nobility, or to equity or common justice.

It was replied by them of the lower house, That they were resolved to go on with their bill, and if the same should be rejected by the Lords, they feared a rupture and division might follow, to the utter ruin and desolation of the whole kingdom, that no content would be given to the subject, (and this was a strong argument indeed, yet better beseeeming partiality and violence, than the pretended justice and piety of the times) unless the man, who had so much intruded upon their right, and discontented the people, might be punished as a traitor ; and for the practice of the kingdom, that no man had ever found such a favourable hearing ; and that the process against Essex, Norfolk, Somerset, were all of them closed up in one day.

Upon Friday the Lords gave answer, That they could expect nothing from the house of Commons, but what should tend to the peace and preservation of the kingdom ; nor was there a more forcible way than

than to preserve the laws and customs thereof, lest innovation, so much complained of by them, might unhappily be found among themselves. That the subjects should have all that justice could afford, but that an act of injustice would never give satisfaction to the world, nor safety to themselves; the eyes of all foreign states being fixed upon the business now in agitation, and the wisdom of our nation either to be much advanced or depressed by their judgments in this case: That the process against Norfolk and Essex (for Somerset was convicted only of felony, and had not so much animadversion to save himself by his book) were for direct and formal treasons, comprized in one or two individual acts; but this against the Lord Strafford only arbitrary and accumulative, to be picked out of twenty-eight articles; and therefore that it was impossible to have a full examination of them all, to give sentence against him. And those noblemen, were charged with some actual breach of statutes, formerly made; but here a new statute was to be made, or else he to be found guilty. They concluded, that they had given order for his appearance on Saturday, and that in the great hall at Westminster, where the house of Commons might, if they pleased, be present.

After some deliberation with the house, the conferrers answered, That since the Lords had so resolved, they would not deny to be there present, and to hear what his counsel could say for him; but to reply any more in publick, they neither could nor would, because of the bill already past: only if the Lords should take any scruple in the matter of law, they would be ready to give them satisfaction by a private conference, (so they willingly declined to do what indeed they could not possibly do) that is, to give public satisfaction in the matter of law.

Upon Saturday: they convened in the great hall, but they that were of the committee for the great charge, did not stand at the bar, as before, but sat promiscuously with the rest of their fellows; so that a mouth was not opened in the behalf of the house of Commons all that day. After they were sat, the Lord Steward told the Lieutenant, That the Lords had resolved to give him a fair hearing in the matter of law, and therefore desired that the counsel might keep that distance, moderation and respect to the judicatory that was sitting, and not at all to meddle with the matter of fact.

The Lieutenant replied, That in all humility he did acknowledge that favour from the Lords; and that it was such an one too, as he could not but expect from such honourable peers and just persons, in whose integrity and goodness (under that which he had placed above) he had reposed his chiefest confidence; for his counsel, they knew much better than himself what concerned the point of discretion and reverence; and that he doubted not but that they would give all satisfaction and obedience.

Then his counsel were called to the bar, Mr. Lane, the Prince's Attorney; Mr. Gardiner, Recorder of London; Mr. Loe, and Mr. Lightfoot. Mr. Lane spake, and much to this sense and purpose:

My Lords, there is an heavy charge lieth on me and my fellows, nothing less than to defend the life, the estate, the reputation, yea the posterity of this honourable person at the bar; if therefore we shall be more pressing, we hope your Lordships will interpret this our forwardness to be for honour and conscience sake, in a matter that concerneth both so nearly; but it shall be our endeavour to carry ourselves with our best respects to your Lordships; and with all content and satisfaction to the honourable house of Commons; and because

because your Lordships mentioned the matter of fact, one thing I dare be bold to say, That all the time of this noble Lord's defences, he did not so much as crave any one of our opinions; yea, or acquainted us with any thing that tended that way. And for the matter of law, those statutes cited by himself were none of our stock, but taken up at his own adventure; nor do I speak this to derogate from the pertinency of those statutes (for they shall be the subject of my discourse) but that the nobleman be not disappointed of your right conceptions, and his own due praise.

My Lords, it is your pleasure we meddle not with matter of fact, and indeed we need not meddle at all with it, because we hope it is already done, and that sufficiently to our hands; yet the matter of law doth so naturally rise out of the matter of fact, that of necessity (under your Lordships favours) we must somewhat grate on this, if we speak on that; nor do I conceive it possible for us to speak advantageously enough for the Lord Strafford's just defence, unless the whole matter of fact be determined, either as proved or not proved, or at least some states of questions agreed upon, where we may fix and settle our arguments. And therefore it is, my Lords, that I have chosen not at all to touch the matter of law (until your Lordships shall be pleased to chalk me out a way) unless it be to clear your judgments in one statute only, viz. 25th of Edward III. Because when the same was alledged by the Lord Strafford in his own defence, that not being convicted of the letter thereof, he could not be convicted of treason; I remember the *salvo* of that statute was much insisted upon by those from the house of Commons, as much conducing to their own ends. My Lords, I will first speak of the statute itself, and then of its *salvo* or provision. The statute is, "That if any man shall intend the death of the King, his

Queen, their children; kill the Chancellor, or Judge upon the bench; imbase the King's coin, or counterfeit the broad-seal, &c. he shall be convicted and punished as a traitor." That the Lord Strafford comes within the letter of this statute, is not so much as once alledged, nor indeed it cannot be with any reason. All that can be said, is, that by relation, or by argument *a minori ad majus*, he may be drawn thither; yet that this cannot be, I humbly offer these considerations.

First, This is a declarative law, and such are not to be taken by way of consequence, equity, or construction, but by the letter only; otherwise they should imply a contradiction to themselves, and be no more declarative laws, but laws of construction, or constitutive.

Secondly, This is a penal law, and such (if our grounds, hitherto unquestioned, hold good) can admit of no constructions or inferences; for penalties are to persuade the keeping of known laws, not of laws conjectural, ambiguous, and by consequence, which perhaps the most learned may not in their disputes question; much less the subject (who is not obliged to interpret the statute) doubt of in the point of obedience; yea rather without any doubt, he is to obey the letter of the statute, and conceive, (and that truly) that he is not liable to the penalty.

Thirdly, We have a notable law, 13th of Elizabeth, cap. 2. whereby it is declared, That the bringing in of bulls from Rome, to stir up the subject to mutiny and rebellion, shall be punished as treason. Now if by interpretation, or by consequence, this sense might have been thrust upon the preceding statutes, the making of this had been superfluous; yea, the persons then charged with that crime, might have been impeached of treason, even before the making of this act.

And so

Anno 21st of Edward III. we have a statute declaring, That for a servant to kill his master, is an act of treason; and in the three and twentieth year of the same King, a process of treason was framed against a man for killing his father, grounded upon the same argument, *a minori ad majus*: But it was found (and the sentence is yet in the records) that although in the one and twentieth year of Edward III. that argument might have been admitted; yet in the twenty-seventh it could not, by reason of the declarative law intervening in the twenty-fifth year; and this case comes very home to the point in law.

My Lords, I will not demand what kind of offence it may be, for a man to subvert the fundamental laws of a kingdom; the crime doubtless is unnatural and monstrous, and the punishment must keep the same proportion; only I presume to offer these few things to your Lordships considerations.

First, That one or more acts of injustice, whether maliciously, or ignorantly done, can in no sense of law be called the subversion of the fundamental laws; if so, as many judges (perhaps) so many traitors. It is very incident to man's nature to err; nor doth the Lord Strafford plead his innocency in over-sights, but in treason.

Secondly, I do remember the case of John de la Poole, Duke of Suffolk: this man, in the twenty-eighth of Henry the VIth, was charged by the House of Commons with articles of treason, and those too very like to these against my Lord Strafford.

1. That he had given the King bad advices.
2. That he had embased his coin.
3. That he had cessed men of war.
4. That he had given out summary decrees.
5. That he had imposed taxes.
6. That he had corrupted the fountain of justice.

7. That he had persuaded the King to unnecessary war, and to the giving over of Anjou in France, *Ovum ovo*.

And for all these, though he was charged with high treason, for wronging the right of the subject, and subverting the fundamental laws of the kingdom; yet after a long agitation, the matter was found by the Lords of Parliament, not to imply treason, but only felony. Add to this another, who in the twenty third of Henry the Eighth, was charged for subverting the English laws, and yet no treason charged upon him. Add to both the charge of Richard Larks, pleaded at the Common-Pleas, who was charged with treason for subverting the law, but convicted only of felony. By which you may see, my Lords, what to this time hath been subverting the laws.

Thirdly, It is very considerable, that the Lord Strafford is not charged to have subverted, but only to have intended to subvert the fundamental laws: And this I conceive, if there were no more, might keep him free from that statute of the twenty-fifth of Edward the Third. For although, as touching the King, his Queen and children, intention is treasonable; yet in all other things there mentioned, there must be action beside intention; for it is not said, If a man do intend to kill a Chancellor, it shall be treason; but only, if he do kill him; and if he doth actually counterfeit the broad seal. And although a man should prepare a furnace, make ready his stamp, melt his bullion, yet if he gives not the King's impression upon the coin, all his intentions, yea, his preparations will not serve to make up a treason.

And this, (under favour) may serve to answer the case of Guido Faux, lately objected; unless it be alledged, that the Lord Strafford had as real an intention against the King's life as Faux had; for though the intention in that case be treason by

by the statute, yet in all other things there is no treason without the action; so immense and vast a difference both is, and ought to be, betwixt a project against the royal blood, and all things else of a lower and under nature.

You see therefore, my Lords, that the body of the statute cannot stick against the Lord Strafford, neither in letter, nor in consequence; this is not, that must not be: All that can be said, is, That this fact may be treason by the common law. For my part I profess my ignorance, who ever thought the common law might declare, but never make a treason; that is, it might be presupposed that there is a statute whereupon to build a declaration; and therefore to say there is no statute for it, is to say it is no treason at all. The statute ever makes the treason; and to be declared to be treason, either by common law, or by Parliament, are but two different ways of proceedings, and must both resolve into one principle; yea, which comes home to the point, in the one and twentieth of Edward the Third, to kill a man employed in the King's war, was treason; and the twenty-third, To kill the King's messenger, was treason by declaration of the common law, but always by reason of the statute; yet none of these are now treasons, but felonies only, by reason of the intervening statute, the twenty-fifth of Edward the Third: such hath ever been thought the force of its letter and declaration. And so I will leave it, and speak a word or two of the *salvo*, which is this; That because all particulars could not be then defined, therefore what the Parliament should declare to be treasonable in time to come, should be punished as treason.

And according to this reservation, in the eighth year of Richard the Second, one who was charged before the King's Bench, was afterwards referred to the Parliament; and there, though the fact was not contain-

ed in the body of the statute, yet because of the *proviso* afore-mentioned, it was adjudged treason.

In the eleventh year of the same King, the Duke of Ireland, and Nevil, Archbishop of York, were impeached of high treason by Gloucester, Arundel and Warwick; and notwithstanding the statute, were convicted thereof by the *salvo*. But in the one and twentieth of the same Richard the Second, the tide turned, and the King had such a hand with the Parliament, that the sentence was recalled, and those three noblemen themselves adjudged traytors. Again, in the first of Henry the Fourth, his successor, that revocation of the one and twentieth of Richard the Second was repealed, and the sentence of the eleventh of his reign established. Such were the tossings to and fro of treason, and all because of that uncertain *proviso*.

Therefore it was, that in the same Parliament, the first of Henry the Fourth, a petition was preferred by the nobility to have treason limited with some statute; because they knew not what to speak, or what to do, for fear thereof. And in the tenth chapter an act was made upon this petition, that the *salvo* should be holden, repealed in all times to come, and nothing esteemed treason but what was literally contained in the statute of the twenty-fifth of Edward the Third; and therefore it is said in the records, That there was great joy at the making of this act, in that the drawn sword hanging over every man's head, by this slender thread of a consequence, or illation, was moved by that act. Add to this, That in the first of Queen Mary, the first chapter, the same is repeated, "That no man shall be punished in life or estate as a traytor, but for the crime contained in the statute of the 25th of Edward III." without the least mention of a pretended *salvo*.

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The Earl of Northumberland's case comes high to the point; he was charged with treason, the first of Henry the Fourth, and if the statute of the fifth of Henry the Fourth, the first chapter, whereby this *proviso* is repealed, had not intervened, no doubt he had been condemned of treason; but he was only convicted of felony, and that because he could not be drawn within the letter of the statute of the twenty-fifth of Edward the Third. And I dare confidently say it, That since that act was made, the first of Henry the Fourth, the first chapter, whereby the *proviso* is repealed, no man hath ever been declared a traitor, either by King or Parliament, except it were upon that, or some other statute, literally and declaratively taken. These two things I do offer to your Lordships considerations; That the Lord Strafford cannot be impeached of treason by the statute of the twenty fifth of Edward the Third, and that the *salvo* contained in the same stands repealed almost two hundred years ago. And this is all I conceive to be necessary for that statute which was alledged by the Lord Strafford in his defence for matter of fact.

Then the Recorder spake some few words to this purpose; That what was spoken upon the statute, was because it seemed inseparable from the matter of fact, that they could proceed no farther, till a state were afforded them; that to do otherwise, they conceived, might be very prejudicial unto my Lord Strafford:

First, In that they should suppose that to be done, which is not proved to be.

Secondly, That the matter of law ariseth so naturally from the matter of fact, that it will be impossible to separate one from the other.

3dly, That it is the course of all judicatories, first to settle the verdict, and upon that to fix the arguments, otherwise he could conceive no possible way of proceeding; and

therefore, in the Lord Strafford's name, he most humbly entreated, that the Lords would either wholly determine the matter of fact (or whether treason or not; for then all other proceedings in the law were unnecessary, but whether done or not done) or else to give them some states of the question whereunto they might confine themselves.

Upon this motion the house was adjourned for that day, nor hath it met since; for the House of Commons are returned to their old bias, and will hear of nothing but the bill of attainder; but the Lords seem to be more resolute than before, because they find that they have no authority to declare a treason in a fact already past, the *salvo* of the 25th of Edward the Third being repealed, withal, that if the bill of attainder should proceed, the King hath as great power to hinder that at the last blow, as any other statute; but I hope the Lords will disburden him of that envy.

All the which stand obliged to the Lord Strafford, in blood, affection or deserving; and all who have been interested with him in the King's service, and many too, who both hate his person, and dislike his proceedings, will doubtless look upon it, and tender their own safety; all of them in likelihood being subject to the charge of treason, if ever they chance to be called to do the King service in any place of importance.

I cannot express how much the voice of the multitude is now altered from what it was lately, nothing now talked of what should be done, but only of what must be done: So that if the Lord Strafford dies, his very enemies will confess, that it is done more for necessity than for justice, and rather for the satisfaction of rancorous apprehensions, than for any guiltiness in the cause.

Thursday last, viz. April 29, was designed for the agitation of the long inter-

mitted business concerning the Lieutenant; and the way was this:

The Lords did meet at the great hall at Westminster about nine of the clock, not in their robes, nor did the Lord Steward sit upon his sack, but with the rest promiscuously; nor did the committee for the House of Commons stand at the bar, but sat with the rest of their fellows; and the Earl of Strafford sat behind the place where he used to sit before; the reason of these changes was, because the dyet was appointed not for a meeting, but for a conference; so curious are we (and that's all) about formalities. The King, Queen and Prince were there, according to their custom: not a man spake a word in the house all the time, but only Mr. St. John, the King's Solicitor, one of the committee, whose duty and purpose was to furnish the Lords with reasons, why the House of Commons had proceeded with a bill of attainder; and withal, to reply to what the Lord Strafford had spoken, either by himself, or his council, in matter of law. The speech was in print.

Upon the close of Mr. St. John's speech, the house dissolved; nor was there a word spoken but by Mr. St. John: only the Lord Lieutenant used the last part of his rhetoric, and by a dumb eloquence, *ma-nibus ad sidera tendis*, all along Mr. St. John's speech, made his replies with a deep silence.

Upon Friday he petitioned the Lords to be heard again, and that because his lawyers had not fully spoken at their last meeting; but this was denied him, because the house were so have the last speech, nor were they content to speak again.

Upon this information, or what else is not known, the King (it seems, fearing the inconstancy of the Lords) came to the House on Saturday at ten of the clock, and having called for the House of Commons, spake much to this effect.

The King's Speech to the House of Commons.

"That he had sincerely, without affection or partiality, endeavoured to inform himself concerning the Lieutenant's charge; and had, at length, seriously pondered with himself, both concerning the matter of fact and the matter of law; and now it stood him in hand to clear their judgments, then to exonerate his own conscience. For them, he had two things to declare:

"First, That there never was such a project, nor had the Lord Strafford ever offered such advice, for the transporting of the Irish army into England; so that in nothing the Lieutenant had been more misunderstood than in that: which imputation did in no small measure reflect on himself (the King) as if he had intended to make war upon his own good subjects; which thought (he said) was far enough from his breast, nor could any man in probability think so unworthily of him, who had perceived how graciously he had dealt with his subjects elsewhere, that had deserved a great deal worse.

"Secondly, That the Lieutenant had never advised him to establish an arbitrary government; nor, if he had, should he have escaped condign punishment; nor would any of his good subjects ever think otherwise, unless they conceived him either to be a fool or a tyrant; that he either could not, or would not discern such wickedness. He was well content (he said) with that authority and power which God had put into his hands, nor should he ever think it his prerogative, to intrude upon the propriety of the subject:

"For himself, and his own conscience, (he said) he was now to declare, That in his own judgment there was nothing in the process against the Lieutenant that deserved

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the censure of treason. Oversight and misdemeanors there were, in such a measure, that he confessed the Lord Strafford was never worthy hereafter to bear any office in his kingdoms, no, not so much as of a constable; but was to be answerable for all his errors, when they were to be charged upon him; and to this none of them should concur with greater alacrity than himself. That he hoped none of them would deny to give him the privilege of the first voice, which was, That he would never, in heart nor hand, concur with them to punish this man as a traitor; and desired therefore, that they would think of some other way how the business might be composed; nor should it ever be less dear to him (though with the loss of his dearest blood) to protect the innocent, than to punish the guilty."

Upon Saturday, May 8, the bill against the Lord Strafford passed the Lords; there were forty-five present, of which nineteen voiced for him, and twenty-six against him. The greatest part of his friends absented themselves upon pretence (whether true or supposititious) that they feared the multitude; otherwise his suffrages had more than counterpoised the voters for his death.

Sunday all the day the King was resolute never to give way to the bill against the Lord Strafford, telling them withal, That it seemed strange to him that the man could not die, unless he, and he only, by giving sentence the King's legislative way, should condemn him.

But after they had wrestled him breathless, at last *victus dedit manus*; being overcome with such incessant importunities, he yielded. And about nine of the clock at night the King promised to sign both the bills the next morning; which was accordingly done, and a commission drawn up for his execution.

The Commons were over-joyed at the passing these two bills, and returned his Majesty their thanks for his extraordinary condescension, assuring him, *They would make him a glorious King, and Richer than any of his Predecessors*: But whatever they then designed to make him, certain it is, he became from that hour dependant on the Parliament, and by giving the royal assent to those two acts, resigned his authority and influence over his people. No man durst serve him, after they saw this great minister sacrificed to his enemies; the Parliament perpetuated, and assuming a power of compelling the King to yield to whatever they demanded. The giving up Lord Strafford to their fury, therefore, was so far from restoring peace and tranquility to the common-wealth, or safety to the royal family, that it inspired the faction with still more insolence, made them look upon the King and Peers as their vassals, and use them for the future as if they really had no other authority than what they derived from the people, whose representatives the commons were.

The King, too late sensible of his error, wrote to the House of Peers, by the Prince his son, to entreat that mercy might be shewn the Earl: That they would be content with his perpetual imprisonment; and endeavour to obtain a conference with the House of Commons, and bring them into the same sentiments, adding, by way of postscript, "That if he must die, it were charity to relieve him till Saturday." But so little influence had the prayers and entreaties of their once Dread Sovereign, that the Lords let his Majesty know, neither of his intentions could be complied with, pretending that the Queen and their children would be in danger, if they should consent to either.

Wednesday the 12th of May, therefore, being appointed for the execution of the Earl, he desired the Lieutenant of the Tower,

Tower, the evening before, to let him speak with the Archbishop of Canterbury, his fellow-prisoner; but the Lieutenant answered, he durst not permit him, without an order of Parliament; whereupon the Earl related to Archbishop Usher, who was then at his Lordship's lodgings in the Tower, what he intended to have said, if he had been permitted to see Archbishop Laud, namely, That he would have desired his grace to assist him with his prayers that night, and give him his blessing when he went to the scaffold the next day; he desired also he would be at his window, that he might thank him for all his favours; and Archbishop Usher delivering the message to Archbishop Laud that evening, his Grace of Canterbury appeared at his window next morning, as the Earl passed by, when the Earl looking up, and demanding his prayers and his blessing, his Grace lifted up his hands, and gave him both; then the Earl, making a submissive bow, said, "God protect your innocence," and moved on towards the scaffold, which was erected on Tower-hill. The Lieutenant was desired to take coach, for fear the mob should rush on him as he walked, and pull him to pieces: But the Earl answered, no; he was not afraid to look death in the face, and the people too. Have you a care, says the Earl, that I don't escape; and whether I die by the hands of the executioner, or the fury of the people, to me is perfectly indifferent.

Having mounted the scaffold, he saluted the gentlemen he found there, and began to take his last leave of his friends, who appeared much more concerned than himself, and observing his brother, Sir George Wentworth, to weep: Brother (said he cheerfully) What do you see in me to deserve these tears? Does any indecent fear betray in me any guilt, or my innocent assurance any atheism? Think now that you are accompanying me the third time to

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my marriage bed: Never did I throw off my cloaths with greater freedom and content, than in this preparation to my grave. That stock (pointing to the block) must be my pillow: Here shall I rest from all my labours: No envious thoughts, no dreams of treason, jealousies, or cares for the King, the state, or myself, shall interrupt this easy sleep; therefore, brother, pity with me those men, who contrary to their intention, have made me happy. Rejoice in my happiness, rejoice in my innocence. Then kneeling down, he made this protestation: I hope, gentlemen, you think that neither the fear of loss, or love of reputation, will suffer me to belie God and my own conscience at this time. I am now in the very door going out, and my next step must be from time to eternity, either of peace or pain. To clear myself before you all, I do here solemnly call God to witness, I am not guilty, so far as I can understand, of the great crime laid to my charge; nor have ever had the least inclination or intention to damnify or prejudice the King, the state, the laws, or religion of this kingdom; but with my best endeavours to serve all, and to support all, "So may God be merciful to my soul."

Then rising up he said, My Lord Primate of Ireland, and my Lords, and the rest of these noble gentlemen, it is a great comfort to me to have your Lordships by me this day, because I have been known to you a long time. I come here, by the good will and pleasure of God, to pay that last debt I owe to sin, which is death; and by the blessing of that God, I trust to rise again, through the merits of Jesus Christ, to righteousness and life eternal.

I submit to the judgment, that has passed on me, with a quiet and contented mind. I thank God I freely forgive all the world from my very heart; there is not a displeasing thought arising in me towards any man living; and my conscience bears me witness,

witness, that in all my employments, since I had the honour to serve his Majesty, I never had any thing in the purpose of my heart, but what tended to the joint and individual prosperity of King and people, although it hath been my ill fortune to be misunderstood.

I am not the first that hath suffered in this kind; it is the common portion of us all, while we are in this life, to err: Righteous judgment we must wait for in another place; for here we are very subject to be misjudged one of another. There is one thing I desire to free myself of, and I am very confident I shall obtain your Christian charity in the belief of it. I was so far from being against Parliaments, that I always thought the Parliaments of England, were the most happy constitutions that any kingdom or nation ever lived under, and the best means under God, to make both King and people happy.

My Lord Primate, it is a great comfort to me, that his Majesty conceives me not meriting so severe and heavy a punishment. I do infinitely rejoice in this mercy of his, and I beseech God to return it into his own bosom, that he may find mercy when he stands most in need of it.

I wish this kingdom all the prosperity and happiness in the world. I did it living, and now dying it is my wish. I do most humbly recommend this to every man who hears me; but desire they would lay their hands upon their hearts, and seriously consider, Whether the beginning of the happiness and reformation of a kingdom should be written in letters of blood; and may I never be so unhappy as that the least drop of my blood should rise up in judgment against any one of you; but I fear you are in a wrong way.

My Lords, I have but one word more: I profess I die a true and obedient son to the "Church of England," wherein I was born, and in which I was bred; "Peace

and prosperity be ever to it." It has been objected, but it is an objection scarce worth answering, that I have been inclined to "popery," though I can truly say, that from the time I was one and twenty years of age, to this present, going now upon forty-nine, I never had it in my heart to doubt of the religion of the "Church of England," nor ever had any man the boldness to suggest any such thing to me. And now, being reconciled by the merits of Jesus Christ, my Saviour, into whose bosom I hope I shall shortly be gathered, to those eternal happinesses which shall never have an end, I desire heartily the forgiveness of every man for any rash or unadvised words, or any thing done amiss. And so, my Lords and gentlemen, farewell! farewell all things of this world!

I desire you will now join with me in prayer, and I trust in God we shall all meet, and live eternally in Heaven, there to receive the accomplishment of all happinesses, where every tear shall be wiped away from our eyes, and every sad thought from our hearts: And now God bless this kingdom, and Jesus have mercy on my soul!

Then he saluted the noblemen, and other persons of distinction upon the scaffold; after which he said again, gentlemen, I entreat you all to pray with me, and for me; and his chaplain, having laid the book of Common-Prayer before him, he kneeled down, and prayed out of it a quarter of an hour, and as long without book, concluding with the Lord's-Prayer.

Then standing up, he said (to Sir George Wentworth) "Brother, we must part." Remember me to my sister, and to my wife, and carry my blessing to my son: charge him that he fear God, and continue an obedient son to the "Church of England;" warn him that he bear no private grudge, or revenge towards any man concerning me. And bid him beware he meddle

meddle not with church livings; for that will prove a moth and canker to him in his estate; and wish him to be a servant to his country, without aiming at high preferment.

Carry my blessing also to my daughters Anne and Arabella: charge them to serve and fear God, and he will bless them; not forgetting my little infant, which yet knows neither good nor evil.

While he was undressing, he said, I as chearfully put off my cloaths at this time, as ever I did when I went to bed; and putting on a white cap, he tucked up his hair under it; then having prayed again, and submitted to the block, his head was severed from his body at one blow.

By the written instructions the Earl left his son, he commanded him to be obedient to the governors he had appointed him; and charged him, as he would answer it at the last day, not to enter upon any public employment, until he should be thirty years of age; and then, if his Prince should call him to public service, he should readily undertake it, and be sincere and faithful to his master, though he should come to the same end he did himself. And lastly, that he should never lay his hands upon any thing that belonged to the church. He foresaw that her revenues would be seized, and conjectured they would be distributed among the nobility and gentry; and again, charged his son, therefore, not to meddle with them, for the curse of God would follow those, he held, that meddled with such things.

An Act for Reversing the Earl of Strafford's Attainder.

Whereas Thomas, late Earl of Strafford was impeached of high treason, upon pretence of endeavouring to subvert the fundamental laws, and called to a public and solemn arraignement and tryal before the

Peers in Parliament, where he made a particular defence to every article objected against him; insomuch that the turbulent party then seeing no hopes to effect their unjust designs, by any ordinary way and method of proceedings, did at last resolve to attempt the Destruction and Attainder of the said Earl, by an act of Parliament, to be therefore purposely made, to condemn him upon Accumulative Treason, none of the pretended crimes being treason apart, and so could not be in the whole, if they had been proved, as they were not; and also adjudged him guilty of Constructive Treason, (that is, of levying war against the King) though it was only the commanding an order of the council-board in Ireland, to be executed by a Serjeant at Arms and three or four soldiers, which was the constant practice of the deputies there for a long time. To the which end, they having first presented a bill for this intent to the House of Commons, and finding there more opposition than they expected, they caused a multitude of tumultuous persons to come down to Westminster, armed with swords and staves, and to fill both the Palace-Yards, and all the approaches to both Houses of Parliament, with fury and clamour, and to require justice, speedy justice, against the Earl of Strafford; and having by those and other undue practices obtained that bill to pass the House of Commons, they caused the names of those resolute gentlemen, who in a case of innocent blood had freely discharged their consciences, being fifty-nine, to be posted up in several places about the cities of London and Westminster; and stiled them Straffordians, and enemies to their country; hoping thereby to deliver them up to the fury of the people, whom they had endeavoured to incense against them. And then procured the said bill to be sent up to the House of Peers, where it having some time rested under great deliberation,

liberation; at last, in a time when a great part of the Peers were absent by reason of the tumults, and many of those who were present protested against it, the said bill passed the House of Peers; and at length his Majesty, the late King Charles I. of glorious memory, granted a commission for giving his royal assent thereunto; which nevertheless was done by his said Majesty with exceeding great sorrow then, and ever remembered by him with unexpressible grief of heart; and out of his Majesty's great piety, he did publicly express it, when his own sacred life was taken away, by the most detestable traitors that ever were.

For all which causes be it declared and enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, That the act intituled, "An Act for the Attainder of Thomas Earl of Strafford of High Treason," and all and every clause and article, and thing therein contained, being obtained as aforesaid, is now hereby repealed, revoked, and reversed.

And to the end that right be done to the memory of the deceased Earl of Strafford aforesaid, be it farther enacted, That all records and proceedings of Parliament, relating to the said Attainder, be wholly cancelled and taken off the file, or otherwise obliterated; to the intent the same may not be visible in after-ages, or brought into example, to the prejudice of any person whatsoever.

Provided, That this act shall not extend to the future questioning of any person or persons, however concerned in this business; or who had any hand in the tumults, or disorderly procuring the act aforesaid; any thing herein contained to the contrary thereof notwithstanding.

A Copy of the Paper posted up at the Corner of the Wall of Sir WILLIAM

BRUNKARD'S House, in the Old Palace-Yard in Westminster, Monday, May 3, 1641.

The Names of the Straffordians posted.

1. Lord Digby
2. Lord Compton
3. Lord Buckhurst
4. Sir Robert Hatton
5. Sir Thomas Fanshawe
6. Sir Edward Alford
7. Nicholas Slanning
8. Sir Thomas Danby
9. Sir George Wentworth
10. Sir Peter Wentworth
11. Sir Frederick Cornwallis
12. Sir William Carnaby
13. Sir Richard Winn
14. Sir Jarvis Clifton
15. Sir William Withrington
16. Sir William Pennyman
17. Sir Patrick Curwent
18. Sir Richard Lee
19. Sir Henry Slingsby
20. Sir William Portman
21. Mr. Jarvis Hollis
22. Mr. Sydney Godolphin
23. Mr. Cooke
24. Mr. Coventry
25. Mr. Benjamin Weston
26. Mr. William Weston
27. Mr. Selden
28. Mr. Alford
29. Mr. Floyd
30. Mr. Herbert
31. Captain Digby
32. Serjeant Hyde
33. Mr. Taylor
34. Mr. Griffith
35. Mr. Scowen
36. Mr. Bridgeman
37. Mr. Fettiplace
38. Dr. Turner
39. Captain Charles Price
40. Dr. Parry, Civilian

41. Mr.

41. Mr. Arundel
 42. Mr. Newport
 43. Mr. Holborne
 44. Mr. Noel
 45. Mr. Kirton
 46. Mr. Pollard
 47. Mr. Price
 48. Mr. Travannion

49. Mr. Jane.
 50. Mr. Edgecombe.
 51. Mr. Chicheley.
 52. Mr. Mallery.
 53. Mr. Porter.
 54. Mr. White, Secret. E. D.
 55. Mr. Warwick.

The Trial of the Most Reverend Father in God WILLIAM LAUD, Lord Archbishop of Canterbury, before a Remnant of the House of Lords; which began March 12, 1643.

THE Commons impeached his grace of high-treason, and other high crimes and misdemeanors, at the bar of the house of Lords, the 18th of December, 1640, desiring he might be committed to safe custody; whereupon he was delivered to the Black-rod, till the Commons should proceed in their impeachment; and on Friday the 26th of February following, fourteen general articles were sent up to the Lords against him.

1. The first charged, That he had traiterously endeavoured to subvert the laws, and introduce arbitrary government.

2. He had denied the authority of Parliaments, establishing an absolute power, not only in the King, but in himself and other bishops, above and against the law.

3. That by threats and promises to the judges, he had perverted the course of justice, and deprived the King's subjects of their rights.

4. That in his own courts he had sold justice, and taken bribes.

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5. That he had caused divers canons to be made, contrary to the King's prerogative, and the laws; established an unlawful authority in himself, and successors; and endeavoured to confirm his exorbitant power by a wicked oath.

6. That he had assumed a papal and tyrannical power.

7. That he endeavoured to subvert the true religion, and introduce Popish superstition.

8. That he abused the trust his Majesty reposed in him, procuring the nomination of persons to ecclesiastical preferments, which belonged to thers, and preferring persons that were Popishly affected.

9. That his own chaplains, to whom he committed the licensing of books, were Popishly affected, which had occasioned the publishing of divers superstitious books.

10. That he endeavoured the reconciling the churches of England and Rome, and countenanced the establishing a Popish hierarchy in the kingdom.

11. That he had caused several orthodox ministers to be silenced, and deprived, and many loyal subjects to forsake the kingdom.

12. That he had abrogated the privileges granted the French and Dutch churches in this kingdom, endeavouring to cause discord between the church of England and other reformed churches.

13. That he had laboured to bring divers Popish innovations into the kingdom of Scotland, in order to create a war between the kingdoms of England and Scotland, and advised his Majesty to subdue the Scots, forcing the English clergy to contribute to that war: that he had censured the pacification as dishonourable, and so incensed his Majesty, that he entered into an offensive war with the Scots.

14. That, to prevent his being questioned for these traitorous proceedings, he endeavoured to subvert the rights of Parliament, and to cause divisions between his Majesty and his people; for which they impeached him of high-treason.

Two or three days after the sending up these articles, his Grace was committed to the Tower, where he remained from the 29th of February 1640-1, to the 24th of October 1643, when he received ten additional articles, together with an order from the Lords, to put in his answer in writing before the 30th of the same month.

1. The first additional article charges, that in the 3d and 4th year of the King, he caused the Parliament to be dissolved, and aspersed the members, affirming they were factious puritans, and commended the Papists.

2. That for ten years past he had endeavoured to advance the power of the council-table, the canons of the church, and the King's prerogative above the laws.

3. That to advance the ecclesiastical power, he had hindered the granting writs of prohibition to the ecclesiastical courts.

4. That a judgment being given against one Burley, a parson, for non-residency, he had stayed execution by applying to the judges, and said, "He would never suffer a judgment to pass against a clergyman, by nihil dicit."

5. That he had caused Sir John Corbet, a justice of peace, to be imprisoned, for causing the petition of right to be read at the sessions of the peace; and, during his imprisonment, granted away part of the glebe lands of Alderly, belonging to the said Sir John; and prevented the execution of a judgment, which Sir John had obtained, and procured him to be committed by the council-table, till he submitted to their order.

6. That divers sums being given for purchasing impropriations, he had caused the same to be overthrown in the court of Exchequer.

7. That he had harboured and relieved Popish priests, who had traduced the 39 articles.

8. That he had said, A blow must be given to the church, before it could be brought to conformity.

9. That in May 1640, he caused the convocation to be held, after the dissolution of the Parliament, where canons were made, contrary to law and the privilege of Parliament, and a dangerous and illegal oath formed, approving the doctrine and discipline of the established church, and promising not to consent to any alteration in the government of the church by archbishops, bishops, deans, archdeacons, &c. Which oath he had taken himself, and caused other ministers to take; and imprisoned the bishop of Gloucester, for refusing to subscribe the said canons, and take the oath, till he submitted.

10. That a resolution being taken at the council-table for assisting the King by extraordinary means, if the Parliament should prove peevish, the Archbishop wickedly advised

advised his Majesty to dissolve the Parliament in 1640, and it was thereupon dissolved; and soon after he told his Majesty, "that he was now absolved from all rules of government, and at liberty to use extraordinary ways for a supply."

Upon receipt of these articles, and the abovesaid order from the Lords, his Grace petitioned he might be allowed something out of his estate, which they had seized and sequestered, to bear the charges of his trial; that his papers might be restored him, that he might be enabled to prepare for his defence; and that he might have counsel, a solicitor, and some servants to attend his business; and upon a second petition, Mr. Dell, his Grace's secretary, was assigned him for a solicitor; Mr. Hearne, Mr. Chute, Mr. Hales, and Mr. Gerard, were assign'd him for counsel; but they would not allow him a penny out of his estate, Glynn telling them he might proceed in *forma pauperis*: However, they made him pay even for the copies of his own papers.

His Grace petitioned the Lords, also, that they would distinguish the treason from the misdemeanors in the articles; for the crimes were so interwoven and connected in the conclusion, that they might all refer to treason, and consequently his counsel would not be permitted to give him any advice in matters of fact; but neither the Lords nor Commons would make any distinction, tho' application was made to them respectively: However, the Lords were so gracious to give him further time to put in his answer, till the 13th of November, when his Grace appeared at their Lordship's bar, and put in his answer in writing to the last article, viz. "That he was not guilty in such manner and form as the said articles of impeachment charged"

But his Grace appearing at the Lord's bar again, the 16th of January 1643-4, it was observed, there was no answer put in to the first articles, or any issue joined; and

thereupon his Grace was ordered to put in his answer to the original articles the 22d of January.

Then his Grace petition'd that his answer to the last articles might be taken off the file, and that they would distinguish between treason and misdemeanors, that he might give a particular answer to both; and that they would give his counsel leave to speak to the generality and uncertainty of the articles which they declared no man living could prepare an answer to, as the case stood; but his Grace was not indulged in any of these particulars, and therefore found himself under a necessity of putting in the same general answer he had done before (viz.) "That he was not guilty:" Only as to the 13th original article, and the rest of them that related to Scotland, he pleaded the late Act of indemnity.

His Grace, having received an order to prepare for his trial the 12th of March, 1643-4, was brought to the bar of the house of Lords that day, where he found a committee of the Commons, consisting of serjeant Wilde, Mr. Brown, Mr. Maynard, Mr. Nicholas, and Mr. Hill, appointed to manage the evidence against him; and Prynne acted as their solicitor, having Grice and Beck to assist him. His Grace also observes, that Prynne, during the trial, kept an office, where he instructed and tampered with the witnesses.

Mr. Serjeant Wilde opened the charge, by a most scandalous and virulent invective against this great Prelate; wherein he says, If the memory of all the pernicious practices, which had been from time to time attempted against our religion and laws were lost, here they would find them revived: That had the faults of this man been no other than those of common frailty and inadvertency, they would gladly have thrown a veil over them; but, being wilful, destructive, and comprehensive of all evils, the sin would lie on their own heads, if they did

did not call for justice. That here was treason in the highest pitch and altitude ; even the betraying the whole realm, and the subversion of the very foundations. That these crimes, of themselves so heinous, were aggravated by the quality of the offender, who had been advanced to the most eminent stations in church and state, and was endowed with many great gifts of nature : But all these advantages he had perverted to the destruction of the public.

That churchmen in all ages, were the archest feedsmen of mischief, and the principal actors in all the great distractions that had happened ; and as they meddled with temporal things, heterogeneal to their calling, God was pleased to smite them with blindness, and infatuate their councils, of which this Prelate was an instance ; who, employing his time in state affairs, became “ the author of all the illegal and tyrannical proceedings and innovations in religion and government, and indeed, of all the concussions and distractions, that had happened in church and state.”

And when by the magnanimity of former princes, and the wisdom of their ancestors, they had shaken off the antichristian yoke ; and when they had seen such bloody massacres, plots, and prosecutions at home and abroad, in order to introduce it again ; that this man should go about to reduce them to those rotten principles of error and darkness again, it could not be expected but the people should be ready to stone him. He concluded, That though Naaman was a great man, yet he was a leper : And this man's leprosy so infected all, that there remained no cure, but the sword of justice ; which they doubted not but their Lordship's would apply, that the commonwealth might live again and flourish.

His Grace having obtained leave to speak in his defence, said,—That it was a great affliction to him to appear at this bar as a criminal, though he should be acquitted ;

but he was not very solicitous about his sentence, for he thanked God he had spent his time so, that he was neither ashamed to live, nor afraid to die ; nor could the world be more weary of him, than he was of it : But if none of these things whereof these men accused him, merited death by law, though he might not in this case appeal to Cæsar, yet he might, and did, to their Lordship's justice ; not doubting but God would protect his innocence.

The charge against him, he observed, was divided into two principal heads, (viz.) His endeavouring to subvert the laws, and, The religion by those laws established.

As to the laws, he said he had been a strict observer of them all his life ; and since he had any share in the administration, no man had been more guided by them than himself, as the learned counsel present, who had attended the council-table, could testify ; nay, he had ever held, that human laws bind the conscience ; and this doctrine he constantly preached. That he looked upon an endeavour to subvert the law a greater crime than to break any particular law, and this they might observe was his judgment, by the book he wrote against Fisher ; out of which he read a passage to this purpose :

“ As to religion, he was born and bred up in the church of England, and by the blessing of God, and the favour of his prince, grown up to the years that were then upon him, and to that place of preferment which he did yet bear ; and in this church, by the grace of God he was resolved to die : That he had ever continued steady to his profession and principles, without any regard to worldly views ; though if his conscience would have given him leave to shift his tenets as time and occasion served, he might have easily slid through all the difficulties of this sort that had pressed him : That he had always endeavoured, that the public worship of God, which was too much slighted, might be preserved, and that with

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fible, that a Parliament should prove peevish.

That it was not said in his diary, that the vote "to assist the King by extraordinary ways," was his advice, but that there was such a general vote of the council; and besides, this appeared by the same diary, to be for the Scottish business, which was within the act of oblivion.

That he never said, "The King might use his power," or any other words to that effect; and if he had, they were not treason; and if they were, there was but one witness of them, and the law required two in treason: However this also related to Scotland, and was therefore within the act of oblivion.

That as to his pressing the payment of ship-money, this was after the judges had given their opinions of the legality of it; and besides, it was the act of the whole council, and could not be ascribed to him in particular; and it was strange this should be accounted high treason in him, and not in the rest. As to the words, "Whoever falls on that stone shall be broken," &c. Two of the witnesses were soap boilers and parties, and were sentenced by the star-chamber for their contempt; that the words were said to be spoken above twelve years since, and he believed none of the managers could think him so weak to have said them: However, they were not treason, and he was not answerable for every thing the star-chamber had done. As to his saying, "Nothing would down with them but acts of Parliament," &c. this was proved but by a single witness, who was a party; and though a great regard ought to be had to acts of Parliament, yet some ought to be paid to the canons. And as to the giving the subsidies in convocation, it was the act of that whole body; and the grant was no other, nor in other manner, than had been granted to Queen Elizabeth; and that the

clergy ever had a power of granting subsidies.

This day's hearing being over, his Grace was ordered to appear again on Saturday the 16th of March, and a note given him by the committee, that they intended to proceed next on part of the second additional article, the third original article, and the third and fifth additional articles, which related to the advancing the power of the council-table, the ecclesiastical jurisdiction, &c. But the hearing was put off to Monday the 18th of March, when his grace being brought to the bar of the house of Lords again, he was charged with causing several houses about St. Paul's to be demolished; to prove which, his diary was produced; wherein he expresses a design of getting that antient fabrick repaired; then three orders of council were produced, for compounding with the tenants, and pulling down their houses if they refused to compound.

It was further objected, That his hand was to another order of council, for the goldsmiths to provide themselves with houses in Cheapside and Lombard Street: And one Bartley, a stationer, who had been put out of his house to make room for the goldsmiths, was produced as an evidence against him.

He was charged also with forcing people to lend money for the repairing of St. Paul's, and with the imprisonment of one Vassal by the council-board, who conceived his Grace to be the author of it. The imprisonment of Sir John Corbet by the council-board, was also imputed to him. His projecting to give the ministers of London some assistance as to their tythes, was urged as another offence, and his diary produced as an evidence of it.

The imprisoning Burton, Prynne, and Bastwick, also was laid to his charge; and particularly the censuring Prynne for libelling: And lastly, he was charged with being instrumental in removing two brew-houses

houses, that were a nuisance to the palace of St. James's.

To the third and fourth day's charge his Grace answered, That when he came to the Bishoprick of London, he thought himself obliged to endeavour the repair of St. Paul's, which was then ready to sink into its ruins, and especially the body of it; which, by the local statutes, the Bishop was to repair while he enjoyed the lands that belonged to the church; and which very well enabled him to do so, till some sacrilegious hands despoiled that Bishoprick of them: And as to the demolishing the houses that were built upon the church-yard, they stood so near the church, that the repairing of it was impracticable, till they were pulled down; and therefore eight or nine thousand pounds had been raised to compound with the inhabitants, for taking down those houses, though they had no right to stand there; that he could not be charged with misapplying any of the money that had been raised for the repairs; and he had indeed contributed twelve hundred pounds out of his own pocket towards the work; nor had he done any thing in relation to these repairs, without the approbation and order of his Majesty, or the Lords of the council; and therefore this ought not to be imputed to him in particular.

As to obliging the goldsmiths to keep their shops, in Lombard-street and Cheap-side, this also was done by order of council, and not to be ascribed to him; and was, however, very far from high-treason: And for his saying in this case, That the council-board was not so weak, but it might command such things, he does not remember he said so then; but he thought the council-table must be very weak indeed, if it could not command in things of decency.

His forcing people to lend money for the repair of St. Paul's, he had no occasion to

speak to, because they did not attempt to prove it.

As to the imprisonment of Mr. Vassal, that was also an act of the Council-board; and Vassal's saying, He conceived his Grace to be the occasion of it, was no proof of it.

The imprisonment of Sir John Corbet also was the act of the Council-board.

And as to his contriving some support for the London ministers, he should have been to blame if he had not, when he was their Bishop; and their case was indeed very hard, all their dues being shrunk into a poor Easter book; and all that he had done in this business, was, to solicit the citizens voluntarily to yield some reasonable addition, where right and necessity appeared.

And as to the censure of Prynne, that was the act of the court of Star-Chamber, and he did not so much as give his vote for that censure.

The complaint of removing the brew-houses was very frivolous, consisting of some little stories, that scarce deserved mentioning in this prosecution; or else they were of some order of the Council-board, that could not be charged on him in particular; and if the whole had been true, it was but treason against a brew-house. Lastly, his Grace desired their Lordships to observe, That this day there had been no less than thirteen witnesses examined against him in their own causes; and although many things had been urged, that concerned the Star-chamber and Council-table, the act for taking away the one, and regulating the other, had no respect to what was passed; and yet here things that were passed, and were the joint acts of the council or Star-chamber, and not his, were urged as treasonable; whereas the provision made by the late statute, against those who should offend for the future, only made such offences misdemeanors.

His

His Grace being brought before the Lords again on Friday the 22d of March, it was represented by the committee, That Mr. Newcomen of Colchester, refused to administer the sacrament any where but at the rails; that Burroughs, the witness, indicting him for it, his bill was thrown out, and he was afterwards called before the High-commission Court for it, by a warrant from his Grace; that the Mayor would not obey a *habeas corpus*, but said he would obey his Grace's warrant, before the King's writ; and that a letter was sent to Judge Crawley, and shewed to Judge Hutton.

One Ask deposed, That his Grace protested some players, that were found at a tavern at an unreasonable time of night, that there was a plot to make the deponent an instrument, about receiving the sacrament at the rails; that letters missive were sent him by the High Commission, and that applying to his Grace, he told the deponent, if he was so strict against churchmen, he must expect to be dealt with as strictly by the High Commission; and that the deponent went to Holland, to avoid the oath *ex officio*.

He was charged also with the censure of the inhabitants of Beckington in Somersetshire, for refusing to place the communion-table at the upper end of the church, north and south, according to the Bishop's order; which was said to be an innovation.

Grafton, a Brownist, also deposed, That he was imprisoned twelve years ago, and fined 50l. and believed he might have been set at liberty sooner, if it had not been for the Archbishop.

The excommunication of one Adams was ascribed to his Grace; who had written over the place where the Commissaries court was kept in the church, "My house shall be called the house of prayer, but ye have made it a den of thieves."

He was charged also with complaining to the King of Mr. Bagshaw, the Reader of the Middle-Temple, and threatening to prosecute him in the High-Commission Court, for asserting, "That a Parliament might be held without Bishops; and that Bishops might not meddle in civil affairs."

And the last charge of this day was, that he had caused Chief Justice Richardson to be checked, for putting down wakes, and his orders to be reversed.

To this part of the charge his Grace answered, That it was not proved Mr. Newcomen had any directions from him for refusing the sacrament, but at the rails; that Burroughs was taken up by a warrant from the High Commission; and that if the Mayor had spoken indiscreet words, he was not answerable for them.

That his Grace knew nothing of any players, as Mr. Ask deposed; that the letters missive were the act of the High Commission, and could not be charged on him; that the oath *ex officio* was the legal way of proceeding in that court; and he could not help the tendering it to Ask, who was a separatist, and knowing himself guilty, durst not appear.

As to placing the Communion-table of Beckington, at the upper end of the chancel, north and south, this was no innovation; Queen Elizabeth having placed it so in her own chapel; and that if the Church-wardens were excommunicated for their contempt, in not obeying their own Bishop, this was none of his act.

That Grafton, the Brownist, was fined and imprisoned by the High-Commission Court, and he was not then a Commissioner, nor was there any proof of his being detained in prison by his Grace's means.

That the excommunication of Adams was no act of his; but he thought he well deserved to be excommunicated; and he acknowledged he did complain of Bagshaw, and

and should have been to blame if he had not, as the constitution then was; and if he did tell him he should answer it in the High-Commission Court, this was no treason.

And lastly, It was the Lord-Keeper Coventry that commanded the Chief Justice's order about wakes to be revoked, which not being complied with, there was an order of council for the Chief Justice's revoking it; but this could not affect the Archbishop, who was of opinion, however, That, though these wakes and feasts of dedication were sometimes abused, this was not a sufficient reason for taking them away.

Thus ended the fifth day's hearing, and his Grace being brought to the bar again, on Thursday the 28th of March, was charged with the censure, deprivation, and imprisonment of Mr. Huntley, a clergyman, and telling his attorney he deserved to be laid by the heels.

That his Grace threatened and imprisoned those who brought prohibitions; and when Prynne brought a prohibition, he said that he would lay him by the heels that brought the next; that he wondered who durst grant prohibitions, the High Commission Court being above all.

The next charge was that of bribery, and his obliging Sir Edward Gresham to give half the penalty of a bond of 200l. which the court assigned him, to the repair of St. Paul's. That the Chester men being fined 1000l. for feasting of Prynne, his Grace, for a bribe of two hogheads of sack, procured the fine to be lessened to 200l. And his Secretary received 150l. to get his hand to a petition to the Lord Keeper.

That he made use of the name of St. Paul's to procure himself money illegally and that he had illegally applied the money given to the repair of St. Paul's.

To this charge of the 6th day his Grace answered, That what had been done against

Huntley, was done by the High Commission, and that this prosecution was in Archbishop Abbot's time: that his attorney deserved to be committed, for his contemptuous behaviour, and was committed by the Lords of the Council for it. And here his Grace took leave to remind their Lordships that there had been nothing transacted at the Council-Table, the Star-Chamber, or High Commission, but such causes as had been determined there in the reigns of Queen Elizabeth and King James; and that no man had been so much as accused of a misdemeanor for what had been done there hitherto, much less of high treason.

He said, he thought it no offence to complain to the King, who was the fountain of justice in both courts, when prohibitions were unjustly granted: and if he threatened to lay him by the heels that brought the next, it was but a hasty expression, and not done; nor had any persons been committed for bringing prohibitions, though they might sometimes for their contemptuous behaviour: there had been as many prohibitions allowed in his seven years, as in any seven years of his predecessors: that there was a great difference between prohibitions now, and in the Times before the Reformation; for then they were granted to restrain a foreign jurisdiction, but now they were both the King's courts, and there could not be that reason for them as formerly: however, all that he had done was to endeavour that some bounds might be set to each court, that the subject might not, to his great trouble and expence, be hurried from one court to another; and took notice, that Archbishop Parker, in the beginning of the Reformation, had shewn that great wrong was done to the ecclesiastical jurisdiction by prohibitions.

As to the corruption he was charged with, in the case of Sir Edward Gresham's son, who married against his consent: that he had voted for greater damages to Sir

Edward, but it was given against him : that the bond mentioned was entirely in his Grace's power, and he might have applied the whole to charitable uses, and therefore there was no colour to charge him with corruption in that matter: that indeed he did get the Chester men's fine abated from 1000l. to 200l. and that afterwards Mr. Stone did send him two hogsheds of sack, which he was very unwillingly prevailed on by Mr. Wheat, Mr. Stone's son-in-law, to receive as a testimony of their gratitude, and this Mr. Wheat attested in court.

As to his secretary's receiving 150l. he said, he must answer for it, who thereupon called a witness, and very handsomely cleared himself of the aspersion.

He denied his raising money illegally for St. Paul's; but said his Majesty had given him the fines of the High Commission towards those repairs; and that it was as lawful to commute in that court as another; and it had been the practice to commute, where the offenders were men of quality.

Lastly, as to his having illegally applied the money given for the repair of St. Paul's; this he shewed to be entirely a mistake: after which his Grace was ordered to appear again, the 4th of April, and received a note from the committee, that they intended to proceed on the 5th and 6th original articles, and on the 9th additional articles, which charge his making canons contrary to the King's prerogative and the laws, and establishing in himself and his successors an unlawful authority: with his assuming a papal and tyrannical power, in matters ecclesiastical and temporal, denying his ecclesiastical power to be derived from the crown, and framing an unlawful oath.

His grace being brought to the bar again the 16th of April, was charged with the making Canons in Convocation, after the Parliament was dissolved, &c. and to prove he had assumed papal power, some letters from the University of Oxford were pro-

duced, wherein his Grace is stiled, *Sanctitas tua*, and *Spiritu sancto effusissime plenus*, *Summus Pontifex*, &c. that he had said, "The clergy were now debased; that heretofore it was otherwise, and he hoped to see it so again." And lastly, that he brought Sir Richard Samuel into the High Commission, for doing his office of Justice of the Peace upon some clergymen; and that one of the articles against him, was His being an enemy to the clergy.

To this his Grace answered, That the Convocation might legally sit after the dissolution of the Parliament, being called by a different writ from that which called the Bishops to Parliament; nor could they rise till his Majesty sent another writ to discharge them: that it was not at the desire of his Grace they continued sitting; however, the Judges had given their opinions they might legally sit: that as to the Bishop of Gloucester's being committed for refusing the oath, it was done by an order of Council; and the principal obstacle to his subscribing was the canon made against the growth of Popery: and as to the oath the canons in King James's Time had enjoined several oaths to be taken by church-wardens, and others, and yet neither those canons, or oaths, had ever been declared illegal by any ensuing Parliament, or the makers of them accused of any crime, much less treason; and his Grace was about to shew that there was nothing in these last canons contrary to law. But their Lordships would not suffer him to contradict what both Houses had voted; to which his Grace replied, That he conceived the Lords were as much concerned in honour, as he was in point of safety, that no charge should be brought against him which he should not be at liberty to answer; and insisted, that these canons being made in full Convocation, could not be ascribed to him in particular, whatever construction was put upon them.

As

As to his assuming papal power, and the proof that was brought of it, the University of Oxford's giving him the papal titles, he said, the title *Sanctitas tua* was not appropriated to the Pope, but frequently given to other Bishops, both Greek and Latin; and as to the stile of *Summus Pontifex*, this was no unusual stile of the chief Prelate of any nation; and that these titles were given him by others, who must be answerable for them; they were never assumed by him: besides, he thought it one thing to assume a papal title, and another to assume papal power.

He did not remember he had ever said, he hoped to see the clergy exempted from the civil magistrate; but if he had, he could only mean it of an exemption from oppression: he might say indeed, "That the clergy were now debased; that heretofore it was otherwise, and he hoped to see it so again; and he thought there was no great hurt in that." He was also charged, he observed, with procuring some clergymen to be made Justices of the Peace, and with recommending Bishop Juxon to be Lord Treasurer; but he did not apprehend there was any crime in this, much less high treason, as he aimed at the service of the King and the good of the church in it.

As to his prosecuting Sir Richard Samuel, for doing his office of Justice of the Peace on some clergymen, he observed this was proved only by Sir Richard, who was a witness in his own cause; and besides, the prosecution was by the High Commission, or the Council-Table, and so not chargeable on his Grace; and it did appear he oppressed the poor clergymen, his neighbours, which was not a genteel part of a man in power.

This day's hearing being over, the Archbishop was ordered to attend again, the 22d of April, which he did, but was sent back, and nothing done any more than on the 25th and 30th of April, when he at-

tended likewise, at the expence of seven or eight pounds a day.

On Saturday, May the 4th, his Grace was brought to the bar again, when Mr. Nicholas, the manager, again reproached him with the high titles he had suffered the University of Oxford, and others, to confer upon him, and then proceeded to enforce that part of the charge, in relation to his endeavouring to exempt the clergy from the civil power; for proof whereof they cited part of a speech of his Grace's in the Star-Chamber, wherein he advises them to take care not to cause the laws of the church, and the kingdom to clash; another proof was a suggestion that he caused some Justices of the Peace to be summoned before the High-Commission, for keeping their sessions at Tewksbury in a part of the church; and as a further evidence of this charge, they said, When the Mayor of Oxford had set the watch, they were disturbed by the Proctors, and a Constable imprisoned, and that his Grace refused to refer the matter; that he had also formed a project to abolish all impropriations; that he had introduced several new and exorbitant clauses into the High Commission: And lastly, That he had illegally extorted a patent from the King, for the fines in the High Commission, towards repairing St. Paul's.

To this his Grace answered, That he did not think it amiss to advise that the laws of the church, and the state, should not clash; which might well stand together, if some did not set them at odds; and as for the Justices of Peace being called before the High Commission, for keeping their sessions in a church, he thought it a great profanation; though men in this age were grown so bold with churches, as if the profanation of them was no fault at all; however, there was no proof of his causing this prosecution.

That

That as to the Oxford watch, it was an ancient privilege of that University; but being lately disputed by the townsmen, they applied to his Grace, as their Chancellor, and he did agree to refer it to the Judge of the circuit; but his troubles coming on; they refused to stand to the award, and would have had another reference: As to his project of buying in impropriations, or prevailing with his Majesty to give such as were in his power, to the support of the Church of Ireland, and which were daily begged by private persons; this he did not think needed a defence, any more than his proposing to settle some fixed *commendams* on the smaller Bishopricks, which was made another article against him.

As to the clauses that were said to be added in the High Commission, his Grace shewed, that they were in the former commission; and whatever power that court exercised, it was not assumed, but granted by his Majesty; and though the manager had compared his Grace to Pope Boniface VIII. as if he took on him the power of both swords, the case was widely different; for that the Pope claimed them as originally due to him, and these commissioners under the Prince, and by his authority.

And lastly, as to his having illegally extorted a patent from the King, for the fines in the High Commission, his Majesty's piety was so forward in that matter, that nothing need be extorted from him: And his Grace should always look upon his endeavours to have St. Paul's repaired, as honest and honourable; neither could any man, after the strictest search, charge him with misapplying a penny of the money.

This hearing being ended, he was ordered to appear again the 9th, and then the 13th of May, both which days he attended, and stood exposed to the scorn and laughter of the mob, and was at length dismissed

unheard, though not without a considerable expence.

His Grace being brought to the bar again, the 16th of May, was charged with presenting a blind man to a living of Sir Arthur Haslerigs, which was an impropriation, and a lay-fee, and with saying, If he lived, no man should stand upon his lay fee; that he had illegally deprived one Fautrye for simony, the High Commission having no power over freeholds; that he had altered the statutes of the University of Oxford, taking upon himself to be an universal law-giver; that he had illegally made new statutes for cathedral churches; and ordered that nothing should be done on those statutes, without advising with him. His injunctions for the visitation of Winton, also were complained of, requiring the pulling down several houses that were upon consecrated ground; and his intention of visiting the two Universities; Then he was charged with the censure of Bastwick, for a book he wrote against Bishops; and with saying, "That Christian Bishops were before Christian Kings."

His Grace answered, That the living he presented to, (said to be Sir Arthur Haslerig's) was not a lay fee; and his words were, "That no man should make a presentative benefice a lay fee:" That Fautrye was illegally censured and deprived by the high-commission, which had a power of deprivation, by the express words of the 1 Eliz. cap. 1. That as the statute of the university of Oxford, they lay in a miserable confusion; and it was the great necessity of it that put him upon that work; neither had he done any thing in it, but by the consent of the university; and thought, he deserved rather the thanks of the publick, than to be prosecuted for it: That there were no illegal innovations introduced, as had been suggested, nothing but what had been put in practice, and approved before his time; that these statutes were confirmed by the broad

broad seal, made by the King's power, and not by any papal power he had assumed, as was urged against him. That the statutes of some Cathedral churches also required great alteration; and there was reason he should be consulted about them, as his Majesty had entrusted his Grace chiefly with that matter, and expected an account from him. That the houses ordered to be demolished at Winton, were new erections upon consecrated ground, and were not to be taken down, till the leases were expired; and this was to be done according to the statutes of the kingdom, and not otherwise.

As to his intention of visiting the universities, it would not have been unlawful, as he had the king's warrant for it; and it appeared that three of his predecessors did actually visit the universities.

That Mr. Bastwick was censured by the high commission, which could not affect him in particular; and that no body doubted but that Christian Bishops were before Christian Kings: And whereas he was charged with saying, "No Bishop, no King;" that was an expression of King James's: and tho' he had affirmed, the order and calling of a bishop, to be from God and Christ, and by apostolical right; yet he held this jurisdiction might not be exercised, but by the leave and power of the King, within whose dominions they were.

His Grace attending again the 10th of May, the committee proceeded on the 6th and 7th original articles; which charge, that his Grace "had traiterously endeavoured to alter, and subvert God's true religion;" which they endeavoured to prove by some alterations he had made in his chapel at Lambeth; as his turning the table north and south, repairing the windows with coloured glass; and imitating the pictures in the mass book; that he used bowings at his coming into the chapel, and going up to the altar; and the organs, candlesticks, the history piece at the back of the

altar, and the wearing copes at communions and consecrations, were brought in, to support the charge. Another instance produced, to shew his intentions of altering religion, was, his consecrating the communion plate. A bible that was found in his study, with the five wounds of our Saviour wrought on the cover; a missal, and other books relating to the Popish liturgy, and his own prayer-book, where the times of prayer were appointed at canonical hours, were held to be sufficient evidence of his design to introduce Popery. The pictures of the fathers in the gallery, and a dove over one of them, (which they said stood for the Holy Ghost) and an *ecce homo*, or Pilate bringing forth Christ, were all looked upon as proofs, of his Popery.

His Grace answered, as to the alterations in his chapel, that it lay before in a very indecent manner; that he had set the table north and south, according to Queen Elizabeth's injunctions, and they were guilty of innovations who set it otherwise; that the windows were miserably patched; and he did, by the assistance of his secretary, discover the story by what remained, and got them repaired, but not by the missal, as was suggested; they contained the whole story from the creation, to the day of judgment; and he did not believe this was in the missal. And even Calvin was of the opinion, that pictures and images might be of use to instruct the people; and that both in King Edward's and Queen Elizabeth's reign, such pictures were allowed; that bowings also were usual in Queen Elizabeth's time, and if he must bow to men, in either house of Parliament, must he not bow and worship God in his own house, though there were neither altar nor communion table in it? That organs, &c. were in the royal chapels in the last reigns; and that in all ages of the church, the consecrating the sacred vessels, as well as churches, had been used. And if that can be no dedication of these things

to.

to Gods, no separation of them from common uses, then neither the things or place were holy; and there would be no such thing as sacrilege, no difference between a church and a common house, between holy tables and ordinary tables; that St. Paul's question puts the matter home, if they would consider it, "Thou which abhorrest idols, dost thou commit sacrilege?" Thou who abhorrest idols to the very defacing of church windows, dost thou of all others commit sacrilege, which the very worshippers of idols punish? As to his prayer of dedication, this was not taken from the missal, but from one used by Bishop Andrews. The bible mentioned, was a present from a Protestant lady, and never seen out of his study, by any who might be offended at it. That he had also a missal and other Popish books, but more of the Greek liturgies than the Roman; and he did not know how he should answer their errors, if he might not have them. That he had also the alcoran in divers copies, and they might by the same rule, conclude him a Mahometan. And as to their exposing his private prayers, he thought this was not to be paralleled in any heathen nation. If he had enjoined himself his prayers, at canonical hours, he hoped there was no sin in it; and if his prayer at the consecration of Hammer-smith chapel might be read, no offence could be taken at it. If he had been so addicted to Popery as they suggested, it was a wonder the diligent Mr. Prynne had found no prayers to the blessed Virgin, and the saints, among his papers.

That as to the dove, representing the Holy Ghost, this was more than the witness could depose; and as to that and the *ecce homo* he answered out of Calvin, That it was lawful to make a picture of any thing that might be seen. And lastly, these pictures had remained in the gallery, ever since the reign of Queen Mary; nor had any of his predecessors, during the time of Queen

Elizabeth, or King James, thought fit to remove them. And as to the bowings he was reproached with, he was sorry any reverence in God's house could be thought too much; but it was the devil's cunning, when he saw superstition thrown out of the church, to bring in irreverence and profaneness. As to the crucifix in the altar-piece, there had been one in the old hangings for thirty years before, which had never given offence.

After this hearing was ended, his Grace was ordered to attend another day, when nothing was done; but he was so fortunate, at last, to get an order to the committee of sequestrations, to receive 200l. out of his own estate; which was all they suffered him to take out of the profits, in the two years it was under sequestration.

At another hearing on May the 27th, they renewed their charge against the windows in Lambeth chapel; particularly they observed, that there was a picture of God the Father in them; and Prynne deposed, that his Grace had a book of pictures, containing the history of our Saviour. They also urged, that the ceremonies used at the coronation were superstitious; and that he had taken upon him to alter the coronation oath. That his Grace suffered the picture of the blessed Virgin, to be painted on the church door of St. Mary's in Oxford; and that copes, bowings, pictures, and candlesticks, were used at Oxford, and in several parish churches, and the communion-table placed altar-wise; which they held to be sufficient evidence of his introducing Popery.

To this his Grace answered, That the picture of God the Father, said to be in Lambeth windows, appeared to be a mistake from their own witnesses: And for the pictures in his book, it was necessary he should have them, there being some things to be discovered from the pictures the Papists allowed their people, which their writings

tings did not, or perhaps durst not avow. And as to the ceremonies used at the coronation, and the coronation oath, he shewed they were the same as in the preceding reign; adding, that his predecessor was then Archbishop, and performed the solemnity.

As to the Virgin Mary's picture at Oxford, he neither ordered it, or knew of it till it was done; nor had he heard of any abuse or dislike of it since; and as to the business of the communion table, copes, bowings, candlesticks, &c. he had already answered that part of the charge.

His Grace being brought to the bar again the 6th of June, great part of the charge of the day before was repeated, and they accused him of promoting several severe sentences in the High Commission; and particularly one against Mr. Workman, for preaching against images; and another against Mr. Sherfield, for defacing a church window at Salisbury; wherein was the picture of God the Father; and that his chaplain, Dr. Bragge, refused to license Dr. Featley's sermons, till a passage against images was struck out.

To this his Grace answered, That Mr. Workman was not censured for preaching against images, but for affirming, That the election of ministers was in the people; for preaching constantly against the government of the church; praying for the States of Holland, and the King of Sweden, before his Majesty; and raising such a faction in Gloucester, that the High Commission did not think it proper he should remain any longer there.

As to Mr. Sherfield's defacing the church window, it did not appear there was any picture of God the Father in it; and if there had, it was not for private men to demolish churches or church windows; but if there was any superstitious pictures in them, they ought to complain to authority. And besides, these censures were

the acts of the High Commission, and could not be charged upon his Grace.

And as to the refusing to license Dr. Featley's sermons, till a passage against images was struck out, he left the care of the press to his chaplains, as his predecessors had done: Whether such a passage was expunged, he knew not; but there were passages as full against images and popery, left in Dr. Featley's sermons, as any that could be struck out; where he stiles the Papists idolaters, as gross as the Baalists; and calls the Pope Antichrist, and the whore of Babylon.

At the conclusion of this hearing, his Grace complained of a paper called, "The Diurnal," wherein he was scandalously abused; and observed, that it had been affirmed in this, and other papers, that the whole charge had been proved against him, which their Lordships knew to be false; but his complaints were very little regarded.

His Grace being brought to the bar again, the 11th of June, the managers proceeded to give evidence of his attempts to subvert the established religion, of which his consecration of two churches, viz. St. Katherine's Cree church, and St. Giles's in the Fields, were said to be instances. The witnesses deposed, that he came in a pompous manner to perform the ceremony, and at his approach to the church door, caused the following passage out of the Psalms to be read, viz. "Lift up your heads O ye gates, and be ye lift ye everlasting doors, and the King of Glory shall come in." That he kneeled down at his coming in, and used many bowings and cringes, threw dust into the air, and used several curies in imitation of the pontifical, taking also one of his prayers from thence; and at last pronounced the place holy. He was charged also with the consecration of chapels, and giving the name of St. John to his own chapel; and a paper was read, laid

said to be a list of his chapel furniture, wherein wafers were mentioned instead of consecrated bread.

The publishing the Book of Sports was also urged as a piece of Popery, and his punishing several of his clergy for not reading it, as another offence. Sir Henry Mildmay, and Anthony Mildmay deposed, that his Grace was hated by one faction at Rome, and loved by another; and, though he was but an obscure man, they observed, within these fifteen years, there was a strong opinion of a reconciliation between the churches of Rome and England since his advancement.

To the charge of this day his Grace answered, That, as to the pomp of the consecrations mentioned, he was only attended by some few officers of the arches, who usually attend their diocesan; and though the managers frequently repeated those words, "Lift up your heads, &c. that the King of Glory may come in," as if he had applied them to his own person: It was a passage antiently used at consecrations, and related to God Almighty, the true King of Glory; who, at the dedication, took possession of the place, by his servant the Bishop: And as to his bowing and kneeling, he looked upon this as his duty, let them call it what they would; that there was no throwing dust in the air, or curses used; and he observed, that one of the witnesses deposed, that this ceremony was performed at the beginning, and the other at the end of the service, and therefore their evidence was inconsistent. That he did not follow the Pontifical, but a copy left by Bishop Andrews, which he had ready to produce; that there were several prayers in the Missal, the same with our Collects; which were, notwithstanding, confirmed by our laws; for though we had separated the chaff, we ought not to throw away the good grain; and wished only, that true religion might remain, till

it was overthrown by the consecration of churches; that there was the same reason for the consecration of chapels as churches; and these were things used long before the times of popery: Nor did he apprehend there was any crime in giving a chapel the name of some saint or angel, for distinction sake, and in honour to their memories; this was a very antient custom, as appeared from St. Austin, and other fathers: And as to the paper that had been read, as a list of his chapel furniture, this was the model of Bishop Andrews's chapel, and nothing of it his Grace's own hand, but the indorsement; though Prynne had sworn it to be a particular of the furniture of the Archbishop's chapel in his own hand: And indeed, he never gave, or received the Communion in any thing but common bread.

As to publishing the Book of Sports and Recreations on Sundays, this was done by the King's authority; that he was always for keeping the day holy, but free from a superstitious holiness; that recreations were not allowed, till after Evening service; and then, only to those who had been at Divine service, morning and evening; and if recreations were not lawful after Divine service, why were they allowed and encouraged at Geneva, where the elder men went to bowls, and the younger to the exercise of their arms: And Calvin gave it as one reason of instituting the Sabbath, "That servants might have a day of rest and remission from their labour: And what manner of rest was that, where able young men might use no recreations? That some had indeed been suspended *ab officio*, for not reading the book, when his Majesty required it; but none had their livings sequestered on that account. Wilson, one of the witnesses, was sequestered for delapidations, and not on account of his refusing to read the book; and Culver, the other witness, for pissing in the body of the

the cathedral at Canterbury. Besides, these men were sequestered by the High Commission, and not by himself. And lastly, it was an observation of Calvin's, "That those men, who stood so strictly for the morality of the Sabbath, did by gross and carnal sabbatization, thrice out-go the superstition of the Jews."

As to Sir Henry Mildmay's deposition, he observed, that he had formerly declared, that his Grace was the most hated at Rome, of any one that had sat in the see of Canterbury, since the reformation; and as for his being an obscure person till within these fifteen years, he had been a Bishop twenty-three years, and it was eighteen since he was made Deap of his Majesty's chapel; and, if a character given him by his enemies, either maliciously or ignorantly, was sufficient to ground a charge of this nature upon, it might lie in the power of two or three Jesuits, to destroy any Bishop in England: And, after all, he much questioned, whether Sir Henry Mildmay had ever been at Rome.

At another hearing the 17th of June, he was accused as being the occasion of Dampport's leaving his benefice, and retiring to Holland; and with saying, (when he heard he was in New-England) "That his arm should reach him there."

That one Nathaniel Wickens had been imprisoned nine weeks, only for being a servant to Mr. Prynne; that upon his refusing the oath *ex officio*, his Grace said, the charge should be taken *pro confesso*; and that his friends were refused a sight of the articles against him.

His Grace was also charged with stopping books at the press, and expunging passages out of them; and particularly the English Bible with Geneva notes: And that he had used his power, to suppress some books in Holland; that he suppressed an Almanack, that left out the apostles

and saints, and inserted the martyrs of Queen Mary's reign in their stead.

His Grace answered, as to Dampport the clergyman's leaving his benefice and flying to Holland, it appeared by the evidence, that he went away upon a summons from the High Commission; that his Grace had prevented a prosecution against him once, but he was not obliged to do it always; and that he was a dangerous and factious man, nor was it fit the plantations should protect such.

That as to Prynne's man, he was imprisoned for refusing the oath *ex officio*; and it was the constant practice of the High Commission, the Star-Chamber, and the Chancery, to take the charge *pro confesso*, where the party refused to answer upon oath; nor did the High Commission ever grant a copy of the articles, till the party took the oath *ex officio*.

That as to his stopping the Bibles with Geneva notes, those notes were very partial, seditious, and dangerous, and of late used to very ill purposes; for which reason the High Commission had been more severe against them than formerly; that they had also restrained the importing Bibles from Holland, because it was a great discouragement to the English printers; and that the states were prevailed on to suppress some seditious libels against the state and church of England, that had been printed in Holland.

His Grace being brought from the Tower to Westminster every day to his trial, relates, that at his landing, he was generally saluted with reproachful language, and particularly by one Quarterman, who this day cried out, "What do the Lords mean to be troubled so often with this base fellow? They would do well to hang him out of the way." Now was Nicholas the manager left scurrilous, when his Grace appeared at the bar, giving him

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worse language, than a man of any education would have given to his slave.

To prove the charge of popery against him this day, they produced a letter, found in his Grace's study, that had been written from a Jesuit to his superior; wherein the Jesuit said, That Arminianism was their drug, and their plot against the Protestants; and urged, that his Grace was the great supporter of the Arminians; that he discouraged lectures who preached against it; and that he had taken upon him to alter the prayers for the 5th of November: And lastly, That his Grace had refused to licence a book of Sir Anthony Hungerford's, and referred him to one of his chaplains.

The Archbishop answered, If it was a crime for a minister of state, to seize the Jesuits letters, how should they detect their plots against religion; that the letter was not directed to him, and he did not see how he could be charged with any thing the Jesuits said in their letters; that it could never be for the peace of the church, to allow factious and humoursome lectures; and if he had altered the prayers for the 5th of November in some little matters, his accusers ought to remember, they had not only altered, but had taken away, this and the whole Liturgy of the church of England, which had been so long established by act of Parliament; and abolishing episcopacy, which had continued in the church of Christ about sixteen hundred years.

As to his refusing to license Sir Anthony Hungerford's book, he left these things to his Chaplains, as his predecessors had always done. It was impossible they should refuse every book themselves.

On the 27th of June his Grace was charged with the following passages out of a speech he made in the Star-Chamber; from whence the managers said, it was evident he held transubstantiation, viz.

"The altar is the greatest place of God's residence on earth, greater than the pulpit; for there it is, *hoc est corpus meum*, This is my body, but in the other it is at most, *hoc est verbum meum*, This is my Word; and a greater reverence is due to the body, than to the word of God."

He was also charged again, with licensing Popish and Arminian books, and suffered his Chaplains to preach and print Arminian doctrines.

To this his Grace answered, that Mr. Nicholas the manager, confounded transubstantiation with the real presence; that Calvin, who was an enemy to transubstantiation, yet held a real and true presence; that St. Paul observes a great sin was committed in his time, "In not discerning the Lord's Body, when unworthy communicants received; that this was at the holy table or altar, St. Paul says, they received, yet did not discern the Lord's Body; and yet he did not think St. Paul maintained transubstantiation; that the communion was ever held to be the touchstone of religion. All divines agreed with what our Saviour taught, Matt. xxvi. 26. That the Passion of Christ, and this blessed sacrament, have the same effect, where the latter is worthily received.

He said, he did not know his Chaplains preached or printed Popish or Arminian doctrines, or licensed any book that maintained them; but if they did, they were answerable for it.

This day an order was made for removing all the Archbishop's books from Lambeth; and it is said, they were given to the infamous Hugh Peters, Cromwell's Chaplain.

The next thing insisted on, was, his Grace's preferring none but men popishly affected; or those, who promoted ceremonies and the Arminian doctrine; instancing in Archbishop Neile, Dr. Bray, Dr. Pierce,

Dr. Pierce, and other celebrated clergy-men.

Then they charged him with causing many pious and learned divines to be silenced, deprived, &c. according to the eleventh original article. They also went upon the sixth additional article, which charges him with hindering and buying in of impropriations.

To these articles his Grace answered, That most of the clergymen, mentioned to be preferred by him, were preferred by others; neither did he know they held Popish or Arminian doctrines; that none were silenced or deprived, but factious preachers and lecturers, and these most of them by other Bishops or the High Commission; for which he was not answerable. That the design of buying in impropriations, was a project to undermine the church. The twelve men who were made the Trustees in this matter, took upon them, without any authority, to dispose of this charity, (as it was called) to whom they saw fit; and bestowed it only on men disaffected to the church, to school-masters and students of the University, to breed them up in opposition to the church; and disposed of none of it to the present incumbents, to whom the tythes were due, unless they appeared to be of their factious principles; and by these means they would, in a short time, have brought great part of the clergy to depend on them; whereupon, Mr. Attorney advising, that the project was illegal, the matter was tried and adjudged to be so in the Court of Exchequer; but that no man had been more zealous for purchasing impropriations than himself, where they might be applied to their proper use.

His Grace being brought to the bar again on the 17th of June, was charged with making a division between the church of England and the foreign reformed churches, by depriving the foreign churches

here, of their privileges; and that passage in his book against Fisher, viz. "No Bishop, no Church," was urged as a further proof of his intention; A passage in Bishop Montagu's book also was cited against his Grace, viz. "That none but a Bishop could ordain, unless in case of necessity." And a third thing insisted on was, his advising Bishop Hall, not to affirm positively, That the Pope was Antichrist: Another offence was, his having asserted, That church government by Bishops was not alterable by human laws.

Then the 13th original article, and the 7th additional article were proceeded on, which charge him with traiterously endeavouring to reconcile the church of England to the church of Rome; to maintain which, Dr. Featly deposed, That about thirty years since, his Grace was reported to be Popishly affected at Oxford; and one Harris deposed, that he was told his Grace would leave the church of England. And a letter or two, found in his Grace's study, from the Pope to some other persons, were looked upon as a further evidence of his Grace's being in a horrid plot, to reconcile the church of England to Rome, which was said to be confirmed by his intimate acquaintance with the Duke of Buckingham; by the favour he was in with the Queen; and by papers sent him by one Habernfield, about a plot; and lastly, his having been offered a Cardinal's cap.

His Grace's answer to this part of the charge, was, That the inference, No Bishop, no Church, was St. Jerome's; and if they were offended at it, they would do well to answer him; that it was the opinion also of many learned and moderate divines, that none but a Bishop could ordain, unless in case of necessity; and whether the foreign churches were under that necessity, might deserve consideration; that he did indeed advise Bishop Hall, not to assert positively, the

the Pope was Antichrist; and observed what King James said, when he was reflected on for saying, the Pope was Antichrist, viz. "I maintain it not as a point of faith, but as a probable opinion; for which, I have more grounds, than the Pope has for his challenge of temporal power over princes: let him recall this opinion, and I will recall that;" adding, he did not believe the calling the Pope Antichrist ever converted one understanding Papist: Nor had Gabriel Powel done the church of England much service abroad, by affirming, "That he was as certain the Pope was Antichrist, as that Jesus Christ was the Son of God, and the Redeemer of the world:" However, he said, he left people to think as their judgments guided them; as appeared by his licensing Dr. Featley's sermons, where he endeavours to prove the Pope Antichrist, and the Whore of Babylon.

To which Nicholas replied in a flood of abusive language, and concluded, That the Archbishop was "Pander to the Whore of Babylon." Whereupon his Grace said, If they did not think fit to treat him as an Archbishop, he hoped he should be used as a Christian; and, were it not for the duty he owed to God and his own innocence, he would desert his defence, rather than endure such language: And the Lords were so good as to express some dislike, at the abusive language that had been given him.

Then his Grace proceeded in his defence, and said, Though he had asserted the government of the church by Bishops, was not alterable by human laws; yet he held, that Bishops might be restrained and limited by human laws, in those things which were but incidents to their calling; but their calling, so far as it was by divine right, could not be taken away, which was the judgment of the church of England; as appeared by the preface to the

book of Ordination, which says, "From the apostles time there have been three orders of ministers in the church of Christ, Bishops, Priests, and Deacons;" and that this book was confirmed by the statute of the 8th of Eliz. cap. 1. observing, That it was a little absurd in them, to cry out of innovations, who had thrown Bishops out of the church, after they had continued in it sixteen hundred years.

As to his being Popishly affected, he observed, these were but reports, and the witnesses had not instanced in one Popish opinion held by him, except it was, his asserting the necessity of Baptism, in the Divinity-school at Oxford. As to their inferring that he was Popishly affected, from some of the Pope's letters found in his study, and directed to other people, this was not at all concluding; for his predecessor had many such letters by him, without any such imputation; nor did his intimacy with the Duke of Buckingham, prove him to be for a Popish match, either with Spain or France, or discover his inclination to Popery, any more than her Majesty's favour.

As to Habernfield's plot, his Grace shewed, he sent the papers to the King immediately after his receiving them; and by those it appeared, There was a conspiracy against his own life: He wondered therefore with what colour they could produce those papers against him.

He did acknowledge, that a person belonging to a certain ambassador, did offer him a cardinal's hat, but he immediately acquainted his Majesty with it; and they ought to have done him the justice to have mentioned his answer to the offer, (viz.) "That somewhat dwelt in him, which would not suffer him to accept that, till Rome was altered;" But as to any other offer by Signior Con, as his enemies had suggested, he knew nothing of it; neither did he suffer Con to come near him, though great application

eration was made to him that he would: Concluding, that if the offer of a Cardinal's hat, would make a man a traitor, then any Papist might bring a Bishop within the danger of high treason.

On the 24th of July, the managers went upon the same articles they did at the preceding hearing, and repeated a great deal of the same matter: They charged him also with saying, "That the church of Rome and ours, was all one; that we did not differ in fundamentals, but in circumstances; that Rome was a true church," &c. That he favoured Papists and released them out of prison; entertained and harboured Sir Toby Matthew, and several Popish priests, refused to commit Fisher the Jesuit; and was very intimate with Secretary Windebank, who used to dismiss Popish priests, when the messengers had taken them; that the priests had the best lodgings in Newgate, and the liberty of walking the streets; that he would not suffer Popish books that were taken to be destroyed, but frequently returned them to the owners; and that he had said in the preface to his book against Fisher, "That to his remembrance, he had not given him or his, any coarse language."

His Grace answered, as to the churches of England and Rome being all one, That his words were, "Nor do the church of Rome and the Protestants set up a different religion, for the Christian religion is the same in both;" and he observed, That unless they maintained Papists were no Christians, they could make nothing of this passage: And as to his saying, "We did not differ in fundamentals;" Calvin himself had asserted, "That in despite of Antichrist the foundations of the church remained in the Papacy itself, that the church might not wholly perish."

As to his being intimate with Mr. Secretary Windebank; he was an old friend, and he thought him a man of worth, but,

if he was deceived, the secretary was living, and must answer for himself. He acknowledged he sent four pounds to release Fludd out of prison; it being represented to him, that he was a convert from Popery, and his imprisonment occasioned on that account; of which he produced a witness: He also brought the servants that attended him constantly, who deposed, They never saw Sir Toby Matthew with his Grace, or any Popish priest entertained by him; and as to Fisher the Jesuit, he did not think it proper to act in that matter, least it should be said, he destroyed himself because he could not answer him.

As to Popish books, he said, it was the constant course of the high commission to give them to their register, to lay up in his office, and when they had a good number of them, then to burn them, and if any were re-delivered to the owners, it was, when they were not found dangerous.

He thought it very hard they should charge him with the confinement or liberty given to the prisoners in Newgate; they did sure design to make the Archbishop Keeper of Newgate. And lastly, as to his not calling names, and giving Fisher and the Pope ill language, when he wrote against them, he was still of opinion that ill language added very little weight to an argument.

His Grace being brought to the bar again the 29th of July, the managers went upon the 14th original article, (viz.) "That to prevent his being questioned for these and other his traitorous proceedings, he had endeavoured to subvert the rights of Parliament, and create a division between his Majesty and his people, and ruin his kingdoms; for which they impeached him of high treason."

The evidence, to support his charge was, That he had assisted the Duke of Buckingham in making two speeches, when he was impeached by the House of Commons; and

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that he had drawn up two of the King's speeches to the Parliament, in which were some four passages; and Sir Sackville Crowe deposed, that his Grace shewed him a paper, in which were several aspersions on the Parliament, and that the paper was subscribed W. Laud: A passage out of his Diary also was read, to shew his enmity to Parliaments (viz.) June 15, 1626. *Post multas agitationes privata malitia Ducem Buckinghamie superavit & suffocavit omnia publica negotia, nihil actum est, sed Parliamentum solum:* Wherein it was observed he charged the Parliament with malice. Another evidence of his aversion to Parliaments, was said to be, his assisting in drawing up the proclamation for suppressing the (rebellious) remonstrance; a paper also was produced, called his Grace's "Reasons against Parliaments," said to be of his own hand-writing: And the following words were read out of his Diary against him, (viz.) The Parliament which was dissolved in March, 1628, sought my ruin; as also some notes on Sir Benjamin Rudyard's speech in Parliament.

Another passage in his Diary was read, purely to expose him, (viz.) 27 October, 1640. "Going into my upper study to send away some manuscripts to Oxford, I found my picture fallen down upon the face, and lying on the floor: I am almost every day threatened with ruin, God grant this be no omen of it." Another passage, half burnt out, which the managers supply'd out of their own invention, was read; wherein they make him say, that "Magna Charta had an obscure birth, and was fostered by an ill nurse." And concluded with part of a dream, the Earl of Pembroke deposed, that his Grace related to him, (viz.) "That he should come to greater preferment in the church, and power in the state, than any man of his birth and calling had done before; but in the end he should be hanged."

Whereupon, Nicholas the manager said, the first part of his dream had proved true, to the great hurt both of church and state; and he hoped their Lordships would now make good the latter, and hang him.

To the charge of this day his Grace answered, That there were no particular faults found with the speeches he made, or corrected, for the Duke of Buckingham; and it was not criminal for one friend to assist another: and as to the King's speeches, he acknowledged he drew them, but he followed his instructions close, and could not imagine that ever this should have been made a foundation for a charge of high treason.

He protested he never gave Sir Sackville Crowe any such paper as was mentioned, and the truth of it was very much to be suspected, in as much, as it was said to be signed W. Laud, and he was then bishop of St. David's, and always subscribed himself *Guil. Menevan* while he held that see: That the testimony of Bland was inconsistent; for he deposed first, That the propositions in that paper, were the occasion of the dissolution of the Parliament; and within three lines he says, they were delivered to the Duke of Buckingham, after the Parliament was dissolved.—That the words *privata malitia* in his Diary, could not relate to the Parliament, but to some private men in that Parliament; And as to the paper called, "Reasons against Parliaments;" It appeared to contain some hopes and fears, which were conceived of a Parliament, and not reasons against them. That his Grace was not the author of those hopes and fears, but only gave his advice as a Privy-counsellor, when it was demanded; and this was his duty; however, those hopes and fears related but to the succeeding Parliament and their hopes prevailing the Parliament sat.—As to the note in his Diary, That a certain Parliament sought his ruin, this was a much better argument to prove the Parliament enemies to him, than he to them;

them; and he thought his disliking a passage in Sir Benjamin Rudyard's speech would never prove him an enemy to Parliaments: That as to his drawing the proclamation, containing an answer to the remonstrance, he did it by command, and agreeable to his instructions; and what the remonstrance tended to, all the world were convinced by this time; That there was no proof of that passage "That Magna Charta had an obscure birth," and indeed the expression was not to be found in several law books.—As to his pretended dream, though the Earl of Pembroke had averred the truth of it, upon his honour, he never had any such dream; he said he had not forgotten the prediction of our Saviour, "That in the world we should be sure to meet with affliction." Nor his prayer, "Father forgive them, for they know not what they do." And concluded his defence with a prayer, "That God would bless both King and people, submitting himself to his divine will."

Then his Grace moved, that a day might be assigned him to make a recapitulation of the whole proceedings, and that his counsel might speak to the points of law, which was granted, after their Lordships had consulted the Commons; and Monday the 2d of September was appointed for the recapitulation.

His Grace appearing at the bar the 2d of September, saw that every Lord had a small folio in his hand, which he found to be his Diary in print, with Prynne's remarks upon it: Before he entered upon his recapitulation, he observed, that his trial began the 12th of March 1643-4, and ended the 29th of July following; during which time their Lordships had heard him twenty days, and twelve days they had sent him back without hearing; and the intervals had been taken up, in finding and managing the evidence against him. He desired their Lordships would consider his function, his great age, his long imprisonment, the loss

of his estate, and the resignation with which he had borne these afflictions; that they would also observe the generality and uncertainty of every article, which made his defence extremely difficult; That the use of his study, his books and papers had been taken from him, and of twenty-three parcels of papers prepared for his defence, and taken from him in the tower, by Mr. Pryne, but three were returned again: That his very pockets were searched, and even his diary and prayer-book taken from him; and made use of, not to prove, but to frame a charge against him. But thus far these hardships had been an advantage to him; that their Lordships had seen the passages of his life; and by his prayer-book, the greatest secrets between God and his soul; and though these had been thoroughly searched, he thanked God, they could find no disloyalty in the one, or Popery in the other: That all the council-books, those of the Star-chamber, High-commission, Signet-office, Registers of Oxford and Cambridge, had all been diligently searched for matter against him; yet he was suffered to have no assistance from any of them, towards making his defence.

That even his actions, that tended to the public good, and the honour of the church and kingdom, and in which he had been at great pains and expences, such as the repairing St. Paul's, and settling the statutes of the University of Oxford, had been objected to him as crimes; that most of the witnesses produced against him, had been exasperated sectaries or Separatists, whom the laws had been put in execution against; but by the civil law, no schismatic was to be admitted a witness against his Bishop: That these men were made witnesses in their own causes, and the judgments of the Star-chamber, High-commission and Council-table, were here on a sudden overthrown, by the testimonies of the parties themselves; nor was it possible for

for one, who had sat as Judge in so many several causes, to give an account of the respective motives that directed his conscience in every one of them, after so many years elapsed: That what he had done was, to the best of his understanding, conducive to the peace and welfare of the kingdom, and the maintenance of the doctrines and discipline of the church established by law: And observed that, while he was in the administration, God had been pleased to bless this state with such peace and plenty, that the neighbouring nations looked on us with admiration. What the overthrow of this constitution might produce, God only knew; but he prayed God to avert it.

He observed also, That every hasty expression to which he had been urged by any provocation, had been insisted on to aggravate the charge; but he hoped their Lordships would impute them to human frailty; that he was in many instances criminally charged with the actions of other men, and even with the acts of the Star-chamber, Council-table, High-commission, and Convocation, where he had but a single vote; and in some of these courts, there sat with him men of the greatest honour, learning and experience; and it was hard, that the same facts should be construed treason in him; which were not censured as misdemeanors in any of the rest. — That there had been no proof of his soliciting any man to concur with him, nor could his vote influence others, because it was always given last.

That as to what had been so strenuously urged against him, that he ascribed that power to the church which belonged to the Parliament; he conceived, the Parliament could not as the law stood, determine the truth of doctrines, without the assent of the church in convocation; that the first clause in Magna Charta, establishes the church in all her rights, of which, “the power of determining in matters of doctrine, and

discipline was one, at that time; nor had this right of the clergy been limited by any law since, but by that clause of 1 Eliz. cap. 1. which impowers the Parliament, with the assent of the convocation, to judge of heresy, &c. and still he held, that the judging of the truth or falsehood of any doctrine was in the church; though the power of punishing offenders was in the Parliament, with the assent of the clergy.

That it was true the King and Parliament might, by their absolute power, change Christianity into Mahometism; and those who could not obey, must either fly, or endure the penalties inflicted for their disobedience; but both King and Parliament, must answer for the abuse of their power to God: And though it had been objected, that if the Parliament would not have meddled with religion without the convocation, there had been no reformation; yet the Articles of Religion were settled by a synod of the clergy, at the reformation; and confirmed by Parliament, with the assent of the clergy, in convocation.

And whereas, his accusers had not been able to charge any one of his actions as treasonable; and yet had notwithstanding, urged that the result of them altogether amounted to treason. He begged leave to observe, that the result must be of the same nature and species with the particulars, from which it arises: And as this rule held in nature and morality, so it did in law; for where there were never so many crimes heaped together, yet there was no law that made the result of different crimes, treason, where none of the particulars were treason by law: That the statute of the 25 Edw. III. had determined what should be deemed treason, and what not; and unless this result was something within that statute, it could not be treason.

His Grace afterwards moved, that his counsel might be heard to the following points, (viz.) Whether all, or any of the articles

articles amounted to high treason: Secondly, Whether the charge contained in them, was made with that certainty the law required: But these points being communicated to the Commons, they would not suffer the counsel to argue any more than the first; with whom their Lordships (now in a manner subject to the Commons) agreed; and Mr Hern, was pitched upon, to deliver his own, and the arguments of the rest of his Grace's Counsel, at the bar of the House, the 11th of the October. Wherein, besides what his Grace had already insisted on, they observe, that as nothing is treason by the law of England, but what is made so by the 25 Edw. III. so that act ought not to be construed by equity or inference: 1. Because it is a declarative law, and no declaration ought to be surcharged with another declaration. 2. This law was provided for a security in life, liberty, and estate; but to admit constructions and inferences upon it, must by consequence destroy the intent and force of the provision. 3. It has been held in Parliament and judicial debates, that this act shall be literally construed, and not stretched to inferences.

Then they proceed to shew, that no part of the charge contains any of the treasons declared by the 25 Edw. III. or any subsequent statute: That an endeavour to subvert the fundamental laws is not treason by any law. 1. Because it is not comprized within any of the words of the 25 Edw. III. nor can be brought within it, by any construction or inference. 2. Because an endeavour to subvert laws, is of so great a latitude and uncertainty, that every action not warranted by law, might by this means be strained to treason; and to corroborate their argument, cited the following case out of Sir Edw. Coke, (viz.) 'A conveyance was made in tail, with a proviso, that if the tenant did go about or attempt, to discontinue the entail, the same should be void; and it was resolved by the judges, that the

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proviso was void, because the words *attempt* or *go about*, are uncertain terms: and the reporter adds, "God defend that inheritances and estates of men should depend upon such uncertainties. *Misera est servitus, ubi jus est vagum & quod non definitur in jure quid sit conatus.*" And therefore the rule of law decides this point; *Non efficit conatus nisi sequitur effectus*, the law rejects conations and goings about, as things uncertain, that cannot be put in issue: and his Grace's counsel urged, that if estates were thus well guarded, it was presumed this reasoning would hold much stronger in cases of life.

Then they singled out two particulars, that seem to have been urged with the greatest force against the Archbishop.

1. That he had traiterously endeavoured to reconcile the Church of England to the Church of Rome. But if this was treason, they observed it must be so by the 5th Jac. cap. 4. which enacts, That if any man shall put in practice, to reconcile any of his Majesty's subjects to the Pope or See of Rome, he shall incur the forfeitures of treason. But first, the article only charges an endeavour, whereas the statute mentions a putting in practice. Secondly, the article charges an endeavour of reconciling the Church of England with the Church of Rome; whereas the statute mentions the reconciling his Majesty's subjects with the See of Rome.

The other particular is in the 7th additional article; in which the Archbishop is charged with wittingly and willingly receiving and harbouring divers popish priests and Jesuits, and particularly, Sancta Clara and Monf. St. Giles: But they observed, that the harbouring Priests and Jesuits was felony, and not treason; and that the statute extends only to priests born within the English dominions, which Sancta Clara and St. Giles were not.

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They urged also several things which his Grace had insisted on before; and in the whole argument confined themselves to the nature and degree of the crimes exhibited in the articles, without touching on matter of fact, or enquiring whether the particulars of the charge were proved or not.

The hearing being over, a petition was handed about London, for bringing delinquents to justice; and several preachers did all that lay in their power to inflame the people; telling them, that nothing could conduce more to the glory of God, than the execution of delinquents: and by these means, a multitude of hands were procured to the petition, which was delivered to the Commons the 28th of October, none being named in it but the Archbishop, and the Bishop of Ely.

And now the Commons, finding that the Lords would not do their business, and convict the Archbishop of high treason, resolved to destroy him by a bill of attainder, which they were so gracious to acquaint the Archbishop with, and ordered him to be brought to their bar the first of November; where Mr. Brown, one of their managers, gave them a summary of the proceedings, before the House of Lords, and his Grace was permitted to answer it, the 11th of the same month; wherein he observed, that, though Mr. Brown was a very able man, and had with a great deal of art summed up the evidence, yet the Commons had not heard the witnesses themselves, as the Lords had done; and that what had been represented to them, was but the collection of one man's judgment, who related what he conceived had been proved: but his opinion possibly might differ widely from the opinion of the Judges themselves, who heard the evidence at large; and besides, Mr. Brown had been absent several days, when his Grace was heard; and of those days he could only report what had been reported to him: and he thought, never any jurors, who

were tryers of facts, either in criminal or civil cases, founded their verdict upon evidence only reported to them, which they did not hear themselves: He offered it to their consideration also, Whether it were just and honourable, to judge him in that house, when he had been impeached by them, and pleaded, and issue joined, and evidence given in upon oath, in another place: Whether, after this, they would think fit to judge him in their own house, only upon a Report or Hear-say, without any oath made before them.

On the 14th of November, his Grace was brought to the bar of the House of Commons again, to hear Mr. Brown's reply, but was not suffered to speak afterwards; and within two days they passed the Ordinance, or bill of Attainder, and sent it up to the Lords; who were still of opinion, That the facts his Grace was charged with, did not amount to high treason: But the Commons sending them a message, "That they would do well to pass the Ordinance, or the multitude would come down and force them to it; and giving them to understand also, that they would be soon voted useless, if they did not comply; a small remnant of the Lords (not above fourteen, at most, present in the House) passed the Ordinance for the Archbishop's attainder, on the 4th of January; and on the 6th, an order of both Houses, was made for his execution on the 10th of the same month. Some historians relate there were only seven Lords present at the passing the bill of Attainder, and give us the names of six of them, viz. The Earls of Kent, Pembroke, Salisbury, and Bolingbroke, the Lord North, and the Lord Grey, of Werk.

The Archbishop afterwards acquainted the Houses, that he had his Majesty's pardon; but this would not avail him. First, because it was granted before conviction, they said; and secondly, that if it had

had been subsequent, yet in a case of treason against the kingdom, (as they termed it) it could be of no force. However, they indulged his Grace so far, as to remit all the rest of the sentence, but the beheading.

This heroic Confessor being brought to the scaffold on Tower-Hill the 10th of January, mounted it with an air of great resolution and cheerfulness, beginning his speech with the following text of Scripture, viz. "Let us run with patience the race that is set before us, looking unto Jesus, &c." And among other things he said, That he was well assured, God was able to deliver him from this violence, as he did the three children from the furnace; and that by our Saviour's assistance, his resolution was the same with theirs: They refused to worship the image the King had set up; neither would he idolize the imaginations of the people, nor forsake the temple and truth of God, to follow the bleating of Jeroboam's calves. As for the people, he observed, they were miserably misled; the blind led the blind; and if they went on, they would both certainly fall into the ditch. Then he observed, that he was not only the first Archbishop, but the first man, that ever died by an ordinance of Parliament; and hoped his cause would appear in heaven, with a different complexion from what was put upon it here: That his case, as foul as it was represented, looked something like that of St. Paul's, who was accused as a great criminal against the law and the temple; and St. Stephen's, who was arraigned for breaking the ordinances that Moses had delivered; that is, for endeavouring the subversion of the laws and religion of his country.

Then he proceeded to clear the King of being Popishly affected; a calumny, which he said he knew him to be as free from, as any man living; for he held him to be as

found a Protestant, (according to the religion by law established) as any man in the kingdom; and that he would venture his life as far and as freely for it. He complained of the riotous tumults of the people, and their clamouring for justice at the Parliament House. This was the way, he said, to draw the guilt of blood upon their heads; and these mutinous disorders, he observed, were not restrained by the magistracy. He lamented the calamitous condition of the church of England: She was become he said, like an oak, cleft in pieces with wedges made of her own body, while iniquity and prophaneness triumphed under the pretence of Godliness; that the substance of religion was lost, and that church, which stood firm against the attacks of the Jesuits, was terribly battered by her own party.

As to his religion, he declared himself of the communion of the church of England, established by law; and in this persuasion, he said he had always lived; notwithstanding the unreasonable clamours raised against him. He declared himself also a friend to the constitution, and particularly to Parliaments; but the best things, he observed, were often corrupted and became the worst: Thus the Parliament being the highest court, the last resort; from which there was no appeal, when this last resort was misinformed or misgoverned; it turned to the most fatal grievance; for in such cases the subject was left without remedy.

After this speech, the Archbishop performed his devotions with great fervency, and then moving towards the block, found the scaffold so crowded with his enemies that came to triumph, that he was forced to entreat them to make way, and give him room to die; but Sir John Clotworthy, who endeavoured to give him all the disturbance he could in his last moments, still stood in his way, and demanded, what

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text of scripture was most comfortable to a dying man; to which his Grace answered, *Curio dissolvi, et esse cum Christo*: But Sir John replied, there must be an assurance to found that desire upon: And Sir John continuing this barbarous treatment, the

Archbishop could find no other way to get rid of the impertinent zealot, than by bidding the executioner do his office, who separated his head from his body at one blow,

The Trial of KING CHARLES THE FIRST, began Saturday, January 20, and ended on Saturday, January 27, 1648.

ON Saturday, being the 20th day of January, 1648, the Lord President of the High Court of Justice, with near fourscore of the members of the said court, having sixteen gentlemen with partizans, and a sword and a mace, with their and other officers of the said court, marching before them, came to the place ordered to be prepared for their sitting at the west-end of the great hall at Westminster; where the Lord President in a crimson velvet chair, fixed in the midst of the court, placed himself, having a desk with a crimson velvet cushion before him; the rest of the members placing themselves on each side of him upon several seats, or benches, prepared and hung with scarlet for that purpose; and the partizans dividing themselves on each side of the court before them.

The court being thus sat, and silence made, the great gate of the said hall was set open, to the end that all persons, without exception, desirous to see or hear, might come into it; upon which the hall was presently filled, and silence again ordered.

This done, Colonel Thomlinson, who had the charge of the prisoner, was commanded to bring him to the court; who within a quarter of an hour's space brought

him, attended with about twenty officers with partizans, marching before him, there being other gentlemen, to whose care and custody he was likewise committed, marching in his rear.

Being thus brought up within the face of the court, the Serjeant at Arms, with his mace, receives and conducts him strait to the bar, having a crimson-velvet chair set before him. After a stern looking upon the court, and the people in the galleries on each side of him, he places himself, not at all moving his hat, or otherwise shewing the least respect to the court; but presently rises up again, and turns about, looking downwards upon the guards placed on the left side, and on the multitude of spectators on the right side of the said great hall. After silence made among the people, the act of Parliament, for the trying of Charles Stuart, King of England, was read over by the Clerk of the court, who sat on one side of a table covered with a rich Turkey carpet, and placed at the feet of the said Lord President; upon which table was also laid the sword and mace.

After reading the said act, the several names of the Commissioners were called over, every one who was present, being eighty

eighty, as aforesaid, rising up, and answering to his call.

Having again placed himself in his chair, with his face towards the court, silence being again ordered, the Lord President stood up, and said :

Lord President. Charles Stuart, King of England, the Commons of England assembled in Parliament, being deeply sensible of the calamities that have been brought upon this nation, (which is fixed upon you as the principal author of it) have resolved to make inquisition for blood; and according to that debt and duty they owe to justice, to God, the kingdom, and themselves, and according to the fundamental power that rests in themselves, they have resolved to bring you to trial and judgment; and for that purpose have constituted this High Court of Justice, before which you are brought.

This said, Mr. Cook, Attorney for the Commonwealth (standing within a bar on the right hand of the prisoner) offered to speak: but the King having a staff in his hand, held it up, and laid it upon the said Mr. Cook's shoulder two or three times, bidding him hold. Nevertheless, the Lord President ordering him to go on, he said :

Mr. Cook. My Lord, I am commanded to charge Charles Stuart, King of England, in the name of the Commons of England, with Treason and High Misdemeanors; I desire the said charge may be read.

The said charge being delivered to the Clerk of the Court, the Lord President ordered it should be read; but the King bid him hold. Nevertheless, being commanded by the Lord President to read it, the Clerk begun, and the prisoner sat down again in his chair, looking sometimes on the High Court, sometimes up to the galleries; and having risen again, and turned about to behold the guards and spectators, sat down, looking very sternly, and with a

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countenance not at all moved, till these words, viz. Charles Stuart, to be a Tyrant and Traytor, &c. were read; at which he laughed, as he sat, in the face of the court.

The Charge of High Treason, and other High Crimes, exhibited to the High Court of Justice, by John Cook, Esq. Solicitor-General, appointed by the said Court, for and on the behalf of the People of England, against Charles Stuart, King of England.

That he, the said Charles Stuart, being admitted King of England, and therein trusted with a limited power to govern by and according to the laws of the land, and not otherwise; and by his trust, oath and office, being obliged to use the power committed to him, for the good and benefit of the people, and for the preservation of their rights and liberties; yet nevertheless, out of a wicked design to erect and uphold in himself an unlimited and tyrannical power to rule according to his will, and to overthrow the rights and liberties of the people; yea, to take away and make void the foundations thereof, and of all redress and remedy of misgovernment, which by the fundamental constitutions of this kingdom, were reserved on the people's behalf, in the right and power of frequent and successive Parliaments or national meetings in council; he, the said Charles Stuart, for accomplishment of such his designs, and for the protecting of himself and his adherents in his and their wicked practices, to the same ends, hath traiterously and maliciously levied war against the present Parliament, and the people therein represented. Particularly, upon or about the thirtieth day of June, in the year of our Lord 1642, at Beverly in the county of York; and upon or about the thirtieth day of July in the year aforesaid, in the county of the city

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city of York; and upon or about the four and twentieth day of August in the same year, at the county of the town of Nottingham, where, and when he set up his standard of war; and also on or about the twenty-third day of October, in the same year, at Edge-Hill and Keynton-Field, in the county of Warwick; and upon or about the thirtieth day of November, in the same year, at Brentford in the county of Middlesex; and upon or about the thirtieth day of August, in the year of our Lord 1643, at Caversham-Bridge near Reading, in the county of Berks; and upon or about the thirtieth day of October, in the year last-mentioned, at or near the city of Gloucester; and upon or about the thirtieth day of November, in the year last mentioned, at Newbury in the county of Berks; and upon or about the thirty-first day of July, in the year of our Lord 1644, at Cropredy-Bridge in the county of Oxon; and upon or about the thirtieth day of September, in the last year mentioned, at Bodmyn and other places near adjacent in the county of Cornwall; and upon or about the thirtieth day of November, in the year last-mentioned, at Newbury aforesaid; and upon or about the eighth day of June, in the year of our Lord 1645, at the town of Leicester; and also upon the fourteenth day of the same month in the same year, at Naleby-Field in the county of Northampton: At which several times and places, or most of them, and at many other places in this land, at several other times within the years afore-mentioned, and in the year 1646, he the said Charles Stuart hath caused and procured many thousands of the free people of this nation to be slain; and by divisions, parties, and insurrections within this land, by invasions from foreign parts, endeavoured and procured by him, and by many other evil ways and means, he the said Charles Stuart hath not only maintained and carried on the said war both

by land and sea, during the years before-mentioned, but also hath renewed or caused to be renewed the said war against the Parliament and good people of this nation, in this present year 1648, in the counties of Kent, Essex, Surry, Suffex, Middlesex, and many other places of England and Wales; and also by sea. And particularly, he the said Charles Stuart hath for that purpose given commission to his son the Prince, and others; whereby, besides multitudes of other persons, many such as were by the Parliament intrusted and employed for the safety of the nation, (being by him or his agents corrupted to the betraying of their trust, and revolting from the Parliament) have had entertainment and commission for the continuing and renewing of war and hostility against the said Parliament and people, as aforesaid. By which cruel and unnatural wars by him the said Charles Stuart, levied, continued and renewed as aforesaid, much innocent blood of the free people of this nation hath been spilt, many families have been undone, the public treasury wasted and exhausted, trade obstructed and miserably decayed, vast expence and damage to the nation incurred, and many parts of this land spoiled, some of them even to desolation. And for further prosecution of his said evil designs, he the said Charles Stuart doth still continue his commissions to the said Prince, and other rebels and revolters, both English and foreigners, and to the Earl of Ormond, and to the Irish rebels and revolters associated with him; from whom further invasion upon this land are threatened, upon the procurement and on the behalf of the said Charles Stuart.

All which wicked designs, wars, and evil practices of him the said Charles Stuart, have been and are carried on for the advancement and upholding of a personal interest of will and power, and pretended prerogative, to himself and his family, against the public.

public interest, common right, liberty, justice and peace of the people of this nation, by and for whom he was intrusted as aforesaid.

By all which it appeareth, that he the said Charles Stuart hath been, and is the occasioner, author, and continuer of the said unnatural, cruel and bloody wars, and therein guilty of all the treasons, murders, rapines, burnings, spoils, desolations, damages and mischiefs to this nation acted and committed in the said wars, or occasioned thereby.

And the said John Cook by protestation, saving, on the behalf of the said people of England, the liberty of exhibiting at any time hereafter any other charge against the said Charles Stuart, and also of replying to the answers which the said Charles Stuart shall make to the premises, or any of them, or any other charge that shall be so exhibited; doth for the said treasons and crimes, on the behalf of the said people of England, impeach the said Charles Stuart, as a tyrant, traitor, murderer, and a public and implacable enemy to the Commonwealth of England; and pray that the said Charles Stuart, King of England, may be put to answer all and every the premises; and that such proceedings, examinations, tryals, sentences and judgments may be thereupon had, as shall be agreeable to justice.

Subscribed, JOHN COOK.

Lord President. Sir, you have now heard your charge, containing such matter as appears in it; you find, that in the close of it, it is prayed to the court, in the behalf of the Commons of England, that you answer to your charge. The court expects your answer.

King. I would know by what power I am called hither; I was not long ago in the Isle of Wight, how I came there, is a longer story than I think is fit at this time

for me to speak of; but there I entered into a treaty with both Houses of Parliament, with as much public faith as it's possible to be had of any people in the world. I treated there with a number of honourable Lords and Gentlemen, and treated honestly and uprightly; I cannot say but they did very nobly with me, we were upon the conclusion of the treaty. Now I would know by what authority, I mean lawful; there are many unlawful authorities in the world, thieves and robbers by the highways; but I would know by what authority I was brought from thence, and carried from place to place, and I know not what; and when I know what lawful authority, I shall answer. Remember I am your King, your lawful King, and what sins you bring upon your heads, and the judgment of God upon this land; think well upon it, I say, think well upon it, before you go further from one sin to a greater; therefore let me know by what lawful authority I am seated here, and I shall not be unwilling to answer. In the mean time I shall not betray my trust; I have a trust committed to me by God, by old and lawful descent, I will not betray it to answer to a new unlawful authority; therefor resolve me that, and you shall hear more of me.

Lord President. If you had been pleased to have observed what was hinted to you by the court, at your first coming hither, you would have known by what authority; which authority requires you, in the name of the people of England, of which you are elected King, to answer them.

King. No Sir, I deny that.

Lord President. If you acknowledge not the authority of the court, they must proceed.

King. I do tell them so, England was never an elective kingdom, but an hereditary kingdom for near these thousand years; therefore let me know by what authority,

authority I am called hither : I do stand more for the liberty of my people, than any here that come to be my pretended judges ; and therefore let me know by what lawful authority I am seated here, and I will answer it ; otherwise I will not answer it.

Lord President. Sir, how really you have managed your trust, is known ; your way of answer is to interrogate the court, which befits not you in this condition. You have been told of it twice or thrice.

King. Here is a gentleman, Lieutenant-colonel Cobbet ; ask him, if he did not bring me from the Isle of Wight by force. I do not come here as submitting to the court ; I will stand as much for the privilege of the House of Commons, rightly understood, as any man here whatsoever. I see no House of Lords here, that may constitute a Parliament ; and the King too should have been. Is this the bringing of the King to his Parliament ? Is this the bringing an end to the treaty in the public faith of the world ? Let me see a legal authority warranted by the word of God the Scriptures, or warranted by the constitutions of the kingdom, and I will answer.

Ld. President. Sir, you have propounded a question, and have been answered. Seeing you will not answer, the court will consider how to proceed ; in the mean time, those that brought you hither, are to take charge of you back again. The court desires to know, whether this be all the answer you will give, or no ?

King. Sir, I desire that you would give me, and all the world, satisfaction in this ; let me tell you, it is not a slight thing you are about. I am sworn to keep the peace, by that duty I owe to God and my country, and I will do it to the last breath of my body ; and therefore you shall do well to satisfy first God, and then the country, by what authority you do it ; if you do it by an usurped authority, you cannot

answer it. There is a God in heaven, that will call you, and all that give you power, to account. Satisfy me in that, and I will answer ; otherwise I betray my trust, and the liberties of the people : and therefore think of that, and then I shall be willing. For I do avow, that it is as great a sin to withstand lawful authority, as it is to submit to a tyrannical, or any otherways unlawful authority : And therefore satisfy me that, and you shall receive my answer.

Ld. President. The court expects you should give them a final answer, their purpose is to adjourn to Monday next, if you do not satisfy yourself, though we do tell you our authority ; we are satisfied with our authority, and it is upon God's authority and the kingdom's, and that peace you speak of will be kept in the doing of justice, and that's our present work.

King. For answer, let me tell you, you have shewn no lawful authority to satisfy any reasonable man.

Ld. President. That is, in your apprehension ; we are satisfied that are your judges.

King. It is not my apprehension, nor yours neither, that ought to decide it.

Ld. President. The court hath heard you, and you are to be disposed of as they have commanded.

The court adjourns to the Painted-chamber, on Monday at ten of the clock in the forenoon, and thence hither.

It is to be observed, That as the charge was reading against the King, the head of his staff fell off, which he wonder'd at ; and seeing none to take it up, he stoops for it himself.

As the King went away, facing the court, he said, I do not fear that, (meaning the sword.) The people in the Hall, as he went down the stairs, cry'd out, some, " God save the King," and most for " Justice.

At

At the High Court of Justice sitting in Westminster-Hall, Monday January 22. 1648.

O Yes made, silence commanded; the court call'd, and answer'd to their names.

Silence commanded upon pain of imprisonment, and the captain of the guard to apprehend all such as make disturbance.

Upon the King's coming in, a shout was made.

Command given by the court to the captain of the guard, to fetch and take into his custody those who make any disturbance.

Mr. Solicitor. May it please your Lordship, my Lord President; I did at the last court, in the behalf of the Commons of England, exhibit and give into this court a charge of high treason, and other high crimes against the prisoner at the bar; whereof I do accuse him in the name of the people of England: and the charge was read unto him, and his answer required. My Lord, He was not then pleased to give an answer, but instead of answering, did there dispute the authority of this High Court. My humble motion to this High Court in behalf of the kingdom of England, is, That the prisoner may be directed to make a positive answer, either by way of confession or negation; which if he shall refuse to do, that the matter of the charge may be taken *pro confesso*, and the court may proceed according to justice.

Ld. President. Sir, You may remember at the last court you were told the occasion of your being brought hither, and you heard a charge read against you, containing a charge of high treason and other high crimes against this realm of England: you heard likewise, that it was prayed in the behalf of the people, that you should give an answer to that charge, that thereupon such proceedings might be had, as should be agreeable to justice. You were then pleased to

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make some scruples concerning the authority of this court, and knew not by what authority you were brought hither; you did divers times propound your questions, and were as often answered, That it was by authority of the Commons of England assembled in Parliament, that did think fit to call you to account, for those high and capital misdemeanors wherewith you were then charged. Since that the court hath taken into consideration what you then said, they are fully satisfied with their own authority, and they hold it fit you should stand satisfied with it too; and they do require it, that you do give a positive and particular answer to this charge that is exhibited against you: they do expect you should either confess or deny it; if you deny, it is offered in the behalf of the kingdom to be made good against you: their authority they do avow to the whole world, that the whole kingdom are to rest satisfied in, and you are to rest satisfied with it. And therefore you are to lose no more time, but to give a positive answer thereunto.

King. When I was here last, 'tis very true, I made that question; and truly if it were only my own particular case, I would have satisfied myself with the protestation I made the last time I was here against the legality of this court, and that a King cannot be try'd by any superior jurisdiction on earth: but it is not my case alone, it is the freedom and the liberty of the people of England; and do you pretend what you will, I stand more for their liberties. For if power without law may make laws, may alter the fundamental laws of the kingdom, I do not know what subject he is in England, that can be sure of his life, or any thing that he calls his own; therefore when that I came here, I did expect particular reasons to know by what law, what authority you did proceed against me here. And therefore I am a little to seek

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what to say to you in this particular, because the affirmative is to be proved, the negative often is very hard to do: but since I cannot persuade you to do it, I shall tell you my reasons as short as I can.

My reasons why in conscience and the duty I owe to God first, and my people next, for the preservation of their lives, liberties, and estates, I conceive I cannot answer this, till I be satisfied of the legality of it.

All proceedings against any man whatsoever—

Lord President. Sir, I must interrupt you, which I would not do, but that what you do is not agreeable to the proceedings of any Court of Justice; you are about to enter into argument, and dispute concerning the authority of this Court, before whom you appear as a prisoner, and are charged as an high delinquent; if you take upon you to dispute the authority of the Court, we may not do it, nor will any Court give way unto it, you are to submit unto it, you are to give a punctual and direct answer, whether you will answer your charge or no, and what your answer is.

King. Sir, By your favour, I do not know the forms of law; I do know law and reason, though I am no lawyer professed, but I know as much law as any gentleman in England; and therefore (under favour) I do plead for the liberties of the people of England more than you do: And therefore if I should impose a belief upon any man without reasons given for it, it were unreasonable; but I must tell you, that that reason that I have, as thus informed, I cannot yield unto it.

Lord President. Sir, I must interrupt you, you may not be permitted: you speak of law and reason, it is fit there should be law and reason, and there is both against you. Sir, the vote of the Commons of England assembled in Parliament, it is the

reason of the kingdom, and they are these that have given to that law, according to which you should have ruled and reigned. Sir, you are not to dispute our authority, you are told it again by the Court. Sir, it will be taken notice of, that you stand in contempt of the court, and your contempt will be recorded accordingly.

King. I do not know how a King can be a delinquent; but by any law that ever I heard of, all men (delinquents, or what you will) let me tell you they may put in demurrers against any proceeding as legal: and I do demand that, and demand to be heard with my reasons; if you deny that, you deny reason.

Ld. President. Sir, you have offer'd something to the court; I shall speak something unto you, the sense of the court. Sir, neither you nor any man are permitted to dispute that point; you are concluded, you may not demur to the jurisdiction of the court; if you do, I must let you know, that they over-rule your demurrer; they sit here by the authority of the Commons of England, and all your predecessors and you are responsible to them.

King. I deny that, shew me one precedent.

Ld. President. Sir, you ought not to interrupt while the court is speaking to you. This point is, not to be debated by you, neither will the court permit you to do it; if you offer it by way of demurrer to the jurisdiction of the court, they have considered of their jurisdiction, they do affirm their own jurisdiction.

King. I say, Sir, by your favour, that the Commons of England was never a court of judicature: I would know how they came to be so?

Ld. President. Sir, you are not to be permitted to go on in that speech and these discourses.

Then the Clerk of the court read as followeth:

“ Charles

Charles Stuart, King of England, you have been accused on the behalf of the people of England of high-treason, and other high crimes; the Court have determined that you ought to answer the same.

King. I will answer the same, so soon as I know by what authority you do this.

Ld. President. If this be all that you will say, then gentlemen you that brought the prisoner hither, take charge of him back again.

King. I do require that I may give in my reasons why I do not answer, and give me time for that.

Ld. President. Sir, 'tis not for prisoners to require.

King. Prisoners! Sir, I am not an ordinary prisoner.

Ld. President. The court hath considered of their jurisdiction, and they have already affirmed their jurisdiction; if you will not answer, we shall give order to record your default.

King. You never heard my reason yet.

Ld. President. Sir, your reasons are not to be heard against the highest Jurisdiction.

King. Shew me that jurisdiction where reason is not to be heard?

Ld. President. Sir, we shew it you here, the Commons of England; and the next time you are brought, you will know more of the pleasure of the court; and, it may be, their final determination.

King. Shew me where ever the House of Commons was a court of judicature of that kind?

Ld. President. Serjeant, take away the prisoner.

King. Well, Sir, remember that the King is nor suffer'd to give in his reasons for the liberty and freedom of all his subjects.

Ld. President. Sir, you are not to have liberty to use this language; how great a friend you have been to the laws and liber-

ties of the people, let all England and the world judge.

King. Sir, under favour it was the liberty, freedom, and laws of the subject, that ever I took—defended myself with arms; I never took up arms against the people, but for the laws.

Ld. President. The command of the court must be obey'd; no answer will be given to the charge.

King. Well, Sir!

And so he was guarded forth to Sir Robert Cotton's house.

Then the court adjourned to the painted chamber on Tuesday at twelve o'clock, and from thence they intend to adjourn to Westminster-Hall; at which time all persons concerned are to give their attendance.

At the High Court of Justice sitting in Westminster-Hall, Tuesday January 23. 1648.

O Yes made, silence commanded, the Court called, seventy three persons present.

The King comes in with his guards, looks with an austere countenance upon the Court, and sits down.

The second O Yes made, and silence commanded.

Mr. Cook, Solicitor General. May it please your Lordship, my Lord President; this is now the third time, that by the great grace and favour of this High Court, the Prisoner hath been brought to the bar before any issue joined in the cause. My Lord, I did at the first court exhibit a charge against him, containing the highest treason that ever was wrought upon the theatre of England; that a King of England, trusted to keep the law, that had taken an oath so to do, that had tribute paid him for that end, should be guilty of a wicked design to subvert and destroy our laws and introduce an arbitrary and tyrannical government, in defiance of the Parliament and their authority

city, set up his standard for war against his Parliament and people; and I did humbly pray, in the behalf of the people of England, that he might speedily be required to make an answer to the charge.

But, my Lord, instead of making any answer, he did then dispute the authority of this High Court. Your Lordship was pleased to give him a further day, to consider, and to put in his answer; which day being yesterday, I did humbly move, that he might be required to give a direct and positive answer, either by denying, or confession of it; but, my Lord, he was then pleased for to demur to the jurisdiction of the court, which the court did then overrule, and command him to give a direct and positive answer. My Lord, besides this great delay of justice, I shall now humbly move your Lordship for speedy judgment against him. My Lord, I might press your Lordship upon the whole, that according to the known rules of the law of the land, That if a prisoner should stand as contumacious in contempt, and shall not put in an issuable plea, Guilty or Not Guilty of the charge given against him, whereby he may come to a fair trial; That as by an implicit confession, it may be taken *pro confesso*, as it hath been done to those who have deserved more favour than the prisoner at the bar has done. But besides, my Lord, I shall humbly press your Lordships upon the whole fact. The House of Commons, the supreme authority and jurisdiction of the kingdom, they have declared, That it is notorious, that the matter of the charge is true, as it is in truth; my Lord, as clear as chrystal, and as the sun that shines at noon-day; which if your Lordship and the court be not satisfied in, I have notwithstanding, on the people of England's behalf, several witnesses to produce. And therefore I do humbly pray, and yet I must confess it is not so much I, as the innocent blood that hath been shed, the cry whereof is very

great for justice and judgment; and therefore I do humbly pray, that speedy judgment be pronounced against the prisoner at the bar.

Ld. President. Sir, You have heard what is moved by the counsel on the behalf of the kingdom against you. Sir, you may well remember, and if you do not, the court cannot forget what dilatory dealings the court hath found at your hands. You were pleased to propound some questions, you have had your resolution upon them. You were told over and over again, that the court did affirm their own jurisdiction; that it was not for you, nor any other man, to dispute the jurisdiction of the supreme and highest authority of England, from which there is no appeal, and touching which there must be no dispute: Yet you did persist in such carriage, as you gave no manner of obedience, nor did you acknowledge any authority in them, nor the High Court that constituted this Court of Justice.

Sir, I must let you know from the court, that they are very sensible of these delays of yours, and that they ought not, being thus authorized by the supreme Court of England, to be thus trifled withal; and that they might in justice, if they pleased, and according to the rules of justice, take advantage of these delays, and proceed to pronounce judgment against you; yet nevertheless they are pleased to give direction, and on their behalfs I do require you, that you make a positive answer unto this charge that is against you, Sir, in plain terms, for justice knows no respect of persons; you are to give your positive and final answer in plain English, whether you be guilty or not guilty of these treasons laid to your charge.

The King, after a little pause, said, *King.* When I was here yesterday, I did desire to speak for the liberties of the people of England; I was interrupted; I desire

fire to know yet whether I may speak freely or not?

Ld. President. Sir, you have had the resolution of the court upon the like question the last day; and you were told, that having such a charge of so high a nature against you, and your work was, that you ought to acknowledge the jurisdiction of the court, and to answer to your charge. Sir, if you answer to your charge, which the court gives you leave now to do, tho' they might have taken the advantage of your contempt; yet if you be able to answer to your charge, when you have once answered, you shall be heard at large, make the best defence you can. But, Sir, I must let you know from the court, as their commands, that you are not to be permitted to issue out into any other discourses, till such time as you have given a positive answer concerning the matter that is charged upon you.

King. For the charge I value it not a rush, it is the liberty of the people of England that I stand for. For me to acknowledge a new court that I never heard of before, I that am your King, that should be an example to all the people of England for to uphold justice, to maintain the old laws; indeed, I do not know how to do it. You spoke very well the first day that I came here, (on Saturday) of the obligations that I had laid upon me by God, to the maintenance of the liberties of my people; the same obligation you spake of, I do acknowledge to God that I owe to him, and to my people, to defend as much as in me lies the ancient laws of the kingdom: Therefore until that I may know that this is not against the fundamental laws of the kingdom, by your favour I can put in no particular charge. If you will give me time, I will shew you my reasons why I cannot do it, and this—

Here, being interrupted, he said,

By your favour, you ought not to interrupt me: how I came here I know not, there's no law for it to make your King.

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your prisoner. I was in a treaty upon the public faith of the kingdom, that was the known—two Houses of Parliament that was the representative of the kingdom; and when that I had almost made an end of the treaty, then I was hurried away, and brought hither: and therefore—

Here the Lord President said, Sir, you must know the pleasure of the court.

King. By your favour, Sir.

Lord President. Nay, Sir, by your favour, you may not be permitted to fall into those discourses; you appear as a delinquent, you have not acknowledged the authority of the court, the court craves it not of you: but once more they command you to give your positive answer—Clerk, do your duty.

King. Duty, Sir!

The Clerk reads.

Charles Stuart, King of England, you are accused in the behalf of the Commons of England of divers high crimes and treasons, which charge hath been read unto you; the court now requires you to give your positive and final answer, by way of confession or denial of the charge.

King. Sir, I say again to you, so that I might give satisfaction to the people of England of the clearness of my proceeding, not by way of answer, not in this way, but to satisfy them that I have done nothing against that trust, that hath been committed to me, I would do it; but to acknowledge a new court, against their privileges, to alter the fundamental laws of the kingdom, Sir you must excuse me.

Lord President. Sir, this is the third time that you have publicly disowned this court and put an affront upon it; how far you have preserved the privileges of the people, your actions have spoke it; but truly, Sir, mens intentions ought to be known by their actions, you have written your meaning in bloody characters throughout the whole kingdom. But, Sir, you understand the

H h

pleasure

pleasure of the court.—Clerk, record the default.—And, gentlemen, you that took charge of the prisoner, take him back again.

King. I will only say this one word more to you; if it were only my own particular, I would not say any more, nor interrupt you.

Lord President. Sir, you have heard the pleasure of the court, and you are (notwithstanding you will not understand it) to find that you are before a court of Justice.

Then the King went forth with his guard, and proclamation was made, That all persons which had then appeared, and had further to do with the court, might depart into the Painted-chamber; to which place the court did forth adjourn, and intended to meet in Westminster-Hall by ten of the clock next morning.

Cryer. God bless the kingdom of England.

Wednesday, January 24th 1648.

This day it was expected the High-Court of Justice would have met in Westminster Hall, about ten of the clock; but at the time appointed, one of the Ushers, by direction of the court (then sitting in the Painted-chamber) gave notice to the people there assembled, that in regard the court was then upon the examination of witnesses, in relation to present affairs, in the Painted-chamber, they could not sit there; but all persons appointed to be there were to appear upon further summons.

The Proceedings of the High Court of Justice, sitting in Westminster Hall, on Saturday the 27th of January 1648.

O Yes made; silence commanded; the court called; Serjeant Bradshaw Lord President (in a scarlet robe) with sixty-eight other members of the court.

As the King comes in, a cry made in the hall for Execution! Justice! Execution!

King. I shall desire a word to be heard a little, and I hope I shall give no occasion of interruption.

Ld. President. You may answer in your time, hear the court first.

King. If it please you, Sir, I desire to be heard, and I shall not give any occasion of interruption, and it is only in a word: a sudden judgment—

Ld. President. Sir, you shall be heard in due time, but you are to hear the court first.

King. Sir, I desire, it will be in order to what I believe the court will say; and therefore, Sir, an hasty judgment is not so soon recalled.

Ld. President. Sir, you shall be heard before the judgment be given; and in the mean time you may forbear.

King. Well, Sir, shall I be heard before the judgment be given?

Ld. President. Gentlemen, it is well known to all, or most of you here present, that the prisoner at the bar hath been several times convented and brought before the court to make answer to a charge of treason, and other high crimes exhibited against him in the name of the people of England; to which charge being required to answer, he hath been so far from obeying the commands of the court, by submitting to their justice, as he began to take upon him to offer reasoning and debate unto the authority of the court, and of the highest court that constituted them to try and judge him: but being over-ruled in that, and required to make his answer, he was still pleased to continue contumacious, and to refuse to submit or answer. Hereupon the court, that they may not be wanting to themselves

* Here a malignant lady (said to be Lady Fairfax) interrupted the court, saying, "Not half the people" but she was soon silenced.

themselves, to the trust reposed in them, nor that any man's wilfulness prevent justice, they have thought fit to take the matter into their consideration; they have considered of the charge, they have considered of the contumacy, and of that confession, which in law doth arise upon that contumacy: they have likewise considered of the notoriety of the fact charged upon this prisoner, and upon the whole matter they are resolved, and have agreed upon a sentence to be now pronounced against this prisoner: but in respect he doth desire to be heard, before the sentence be read and pronounced, the court hath resolved that they will hear him. Yet, Sir, thus much I must tell you before-hand, which you have been minded of at other courts, that if that you have to say, be to offer any debate concerning jurisdiction, you are not to be heard in it; you have offered it formerly, and you have indeed struck at the root, that is, the power and supreme authority of the Commons of England, which this court will not admit a debate of; and which indeed is an irrational thing in them to do, being a court that acts upon authority derived from them, that they should presume to judge upon their superior, from whom there is no appeal. But, Sir, if you have any thing to say in defence of yourself concerning the matter charged, the court hath given me in command to let you know they will hear you.

King. Since that I see that you will not hear any thing of debate concerning that which I confess I thought most material for the peace of the kingdom, and for the liberty of the subject, I shall wave it; I shall speak nothing to it, but only I must tell you, that this many a-day all things have been taken away from me, but that that I call more dear to me than my life, which is my conscience and my honour; and if I had respect to my life more than the peace of the kingdom, the liberty of

the subject, certainly I should have made a particular defence for myself; for by that at leastwise I might have delayed an ugly sentence, which I believe will pass upon me. Therefore certainly, Sir, as a man that hath some understanding, some knowledge of the world, if that my true zeal to my country had not overborne the care that I have of my own preservation, I should have gone another way to work than that I have done. Now, Sir, I conceive, that an hasty sentence once passed, may sooner be repented than recalled; and truly, the self-same desire that I have for the peace of the kingdom, and the liberty of the subject, more than my own particular, does make me now at last desire, that having something to say that concerns both, I desire before sentence be given, that I may be heard in the Painted chamber before the Lords and Commons. This delay cannot be prejudicial to you, whatsoever I say; if that I say no reason, those that hear me must be judges; I cannot be judge of that that I have: if it be reason, and really for the welfare of the kingdom, and the liberty of the subject, I am sure on't, very well 'tis worth the hearing; therefore I do conjure you, as you love that that you pretend, I hope it's real, the liberty of the subject, the peace of the kingdom, that you will grant me the hearing before any sentence be past. I only desire this, that you will take this into your consideration, it may be you have not heard of it before-hand; if you will, I'll retire, and you may think of it: but if I cannot get this liberty, I do here protest, that so fair shews of liberty and peace, are pure shews, and not otherwise, than that you will not hear your King.

Lord President. Sir, you have now spoken.

King. Yes, Sir.

Lord President. And this that you have said is a further declining of the jurisdiction of

of this court, which was the thing wherein you were limited before.

King. Pray excuse me, Sir, for my interruption, because you mistake me; it is not a declining of it, you do judge me before you hear me speak: I say it will not, I do not decline it, though I cannot acknowledge the jurisdiction of the court; yet, Sir, in this give me leave to say, I would do it, though I did not acknowledge it in this, I do protest it is not the declining of it, since I say, if that I do say any thing, but that that is for the peace of the kingdom, and the liberty of the subject, then the shame is mine. Now I desire that you will take this into your consideration; if you will, I'll withdraw.

Ld. President. Sir, this is not altogether new that you have moved unto us; nor altogether new to us, though the first time in person you have offered it to the court. Sir, you say you do not decline the jurisdiction of the court.

King. Not in this that I have said.

Ld. President I understand you well, Sir, but nevertheless that which you have offered, seems to be contrary to that saying of yours; for the court are ready to give a sentence: It is not as you say, That they will not hear your King; for they have been ready to hear you, they have patiently waited your pleasure for three courts together, to hear what you would say to the people's charge against you, to which you have not vouchsafed to give any answer at all. Sir, this tends to a further delay; truly, Sir, such delays as these, neither may the kingdom, nor justice well bear; you have had three several days to have offered in this kind what you would have pleased. This court is founded upon that authority of the Commons of England, in whom rests the supreme jurisdiction; that which you now tender, is to have another jurisdiction, and a co-ordinate jurisdiction. I know very well you express yourself, Sir, that notwith-

standing that you would offer to the Lords and Commons in the Painted-chamber, yet nevertheless you would proceed on here, I did hear you say so. But, Sir, that you would offer there, whatever it is, it must needs be in delay of the justice here; so as if this court be resolved, and prepared for the sentence, this that you offer they are not bound in justice to grant: But, Sir, according to that you seem to desire, and because you shall know the further pleasure of the court upon that which you have moved, the court will withdraw for a time.

King. Shall I withdraw?

Ld. President. Sir, you shall know the pleasure of the court presently. The court withdraws for half an hour into the court of wards.

Serjeant at Arms. The court gives command, that the prisoner be withdrawn; and they give order for his return again.

The court withdraws for half an hour, and returns.

Ld. President. Serjeant at Arms send for your prisoner.

Sir, you were pleased to make a motion here to the court to offer a desire of yours, touching the propounding of somewhat to the Lords in the Painted-chamber, for the peace of the kingdom: Sir, you did in effect receive an answer before the court adjourned; truly, Sir, their withdrawing and adjournment was *pro formâ tantum*: for it did not seem to them that there was any difficulty in the thing; they have considered of what you have moved, and have considered of their own authority, which is founded, as hath been often said, upon the supreme authority of the Commons of England assembled in Parliament; the court acts according to their commission. Sir, the return I have to you from the court, is this: That they have been too much delayed by you already, and this that you now offer, hath occasioned some little further delay; and they are judges appointed by the

the highest judges; and judges are no more to delay, than they are to deny justice: they are good words in the great old charter of England, *Nulli negabimus, nulli vendemus, nulli deferemus justitiam*. There must be no delay; but the truth is, Sir, and so every man here observes it, that you have much delayed them in your contempt and default, for which they might long since have proceeded to judgment against you; and notwithstanding what you have offered, they are resolved to proceed to punishment, and to judgment, and that is their unanimous resolution.

King. Sir, I know it is vain for me to dispute, I am no sceptick for to deny the power that you have; I know that you have power enough: Sir, I confess, I think it would have been for the kingdom's peace, if you would have taken the pains for to have shown the lawfulness of your power; for this delay that I have desired, I confess it is a delay, but it is a delay very important for the peace of the kingdom; for it is not my person that I look on alone, it is the kingdom's welfare, and the kingdom's peace; it is an old sentence, That we should think on long before we have resolved of great matters suddenly. Therefore, Sir, I do say again, that I do put at your doors all the inconveniency of an hasty sentence. I confess I have been here now, I think, this week; this day eight days was the day I came here first, but a little delay of a day or two further may give peace; whereas an hasty judgment may bring on that trouble and perpetual inconveniency to the kingdom, that the child that is unborn may repent it; and therefore again, out of the duty I owe to God, and to my country, I do desire that I may be heard by the Lords and Commons in the Painted-chamber, or any other chamber that you will appoint me.

Ld. President. Sir, you have been already answer'd to what you even now moved, being the same you moved before,
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since the resolution and judgment of the court in it: And the court now requires to know whether you have any more to say for yourself, than you have said, before they proceed to sentence?

King. I say this, Sir, That if you will hear me, if you will give but this delay, I doubt not but I shall give some satisfaction to you all here, and to my people after that; and therefore I do require you, as you will answer it at the dreadful day of judgment, that you will consider it once again.

Ld. President. Sir, I have received direction from the court.

King. Well, Sir!

Ld. President. If this must be re-enforced, or any thing of this nature, your answer must be the same; and they will proceed to sentence, if you have nothing more to say.

King. Sir, I have nothing more to say, but I shall desire, that this may be entered what I have said.

Ld. President. The court then, Sir, hath something else to say to you; which, although I know it will be very unacceptable, yet notwithstanding they are willing, and are resolved to discharge their duty.

Sir, You speak very well of a precious thing that you call peace; and it had been much to be wished that God had put it into your heart, that you had as effectually and really endeavoured and studied the peace of the kingdom, as now in words you seem to pretend: But, as you were told the other day, actions must expound intentions; yet actions have been clean contrary. And truly, Sir, it doth appear plainly enough to them, that you have gone upon very erroneous principles; the kingdom hath felt it to their smart; and it will be no ease to you to think of it: For, Sir, you have held yourself, and let fall such language, as if you had been no ways subject to the law, or that the law had not been your superior. Sir, the court is very well sensible of it, and I hope so are all the understanding people of England,

England, that the law is your superior; that you ought to have ruled according to the law; you ought to have done so. Sir, I know very well your pretence hath been that you have done so; but, Sir, the difference hath been who shall be the expositors of this law: Sir, whether you and your party, out of courts of justice, shall take upon them to expound the law, or the courts of justice, who are the expounders? nay, the Sovereign, and the High Court of Justice, the Parliament of England, that are not only the highest expounders, but the sole makers of the law? Sir, for you to set yourself with your single judgment, and those that adhere unto you, to set yourself against the highest Court of Justice, that is not law. Sir, as the law is your superior, so truly, Sir, there is something that is superior to the law, and that is indeed the parent and author of the law, and that is the people of England: For, Sir, as they are those that at the first (as other countries have done) did chuse to themselves this form of government, even for justice sake, that justice might be administered, that peace might be preserved; so, Sir, they gave laws to their governors, according to which they should govern; and if those laws should have proved inconvenient or prejudicial to the public, they had a power in them, and reserved to themselves, to alter as they shall see cause. Sir, it is very true, what some of your side have said, *Rex non habet potestatem in regno*, so they: This court will say the same, while King, that you have not your peet in some sense; for you are *major singulis*; but they will aver again that you are *minor universis*. And the same author tells you, that in *Exhibitionibus juris*, there you have no power; but in

quasi minoribus. This we know to be law, *Rex habet superiorem; Deum & legem, etiam & curiam*; and so says the same author. And truly, Sir, he makes bold to go a little farther; *Debent ei ponere frænum*; They

ought to bridle him. And, Sir, we know very well the stories of old: Those wars that were call'd the Barons War, when the nobility of the land did stand out for the liberty and property of the subject, and would not suffer the Kings that did invade to play the tyrants free, but called them to account for it, we know that truth, that they did *frænum ponere*. But, Sir, if they do forbear to do their duty now, and are not so mindful of their own honour, and the kingdom's good, as the barons of England of old were, certainly the Commons of England will not be unmindful of what is for their preservation, and for their safety; *Justitie frugandi causa Reges constituti sunt*. This we learn; The end of having Kings or any other governors, it's for the enjoying of justice, that's the end. Now, Sir, if to be the King will go contrary to that end, or any other governor will go contrary to the end of his government; Sir, he must understand that he is but an officer in trust, and he ought to discharge that trust; and they are to take order for the animadversion and punishment of such an offending governor.

This is not law of yesterday, Sir, (since the time of the division betwixt you and your people) but it is law of old. And we know very well the authors and authorities that do tell us, what the law was in that point upon the election of Kings, upon the oath that they took unto their people: And if they did not observe it, there were those things called Parliaments, the Parliaments were they that were to adjudge (the very words of the author) the plaints and wrongs done of the King and the Queen, or their children; such wrongs especially, when the people could have no where else any remedy. Sir, that hath been the people of England's case; they could not have their remedy elsewhere but in Parliaments.

Sir, Parliaments were ordained for that purpose, to redress the grievances of the people

people; that was their main end. And truly, Sir, if so be that the Kings of England had been rightly mindful of themselves, they were never more in majesty and state than in the Parliament: but how forgetful some have been, stories have told us; we have a miserable, a lamentable, a sad experience of it. Sir, by the old laws of England, I speak these things the rather to you, because you were pleased to let fall the other day, you thought you had as much knowledge in the law as most gentlemen in England. It is very well, Sir. And truly, Sir, it is very fit for the gentlemen of England to understand that law under which they must live, and by which they must be governed. And then, Sir, the Scripture says, "They that know their master's will, and do it not: what follows? The law is your master, the acts of Parliament."

The Parliaments were to be kept annually, we find in our old author, twice in the year, that the subject upon any occasion might have a ready remedy and redress for his grievance. Afterwards, by several acts of Parliament in the days of your predecessor, Edward the Third, they should have been once a year. Sir, what the intermission of Parliaments hath been in your time, it is very well known, and the sad consequences of it; and what in the interim, instead of these Parliaments, hath been by you by an high and arbitrary hand introduced upon the people, that likewise hath been too well known and felt. But when God by his providence had so far brought it about, that you could no longer decline the calling of a Parliament, Sir, yet it will appear what your ends were against the ancient and your native kingdom of Scotland: The Parliament of England, not serving your ends against them, you were pleased to dissolve it. Another great necessity occasioned the calling of this Parliament; and what your designs, and

plots, and endeavours all along hath been, for the crushing and confounding of this Parliament, hath been very notorious to the whole kingdom. And truly, Sir, in that you did strike at all; that had been a sure way to have brought about that that this charge lays upon you, your intention to subvert the fundamental laws of the land; for the great bulwark of the liberties of the people is the Parliament of England; and to subvert and root up that, which your aim hath been to do, certainly at one blow you had confounded the liberties and the property of England.

Truly, Sir, it makes me call to mind; I cannot forbear to express it; for, Sir, we must deal plainly with you, according to the merits of your cause, so is our commission: It makes me call to mind, (these proceedings of yours) that that we read of a great Roman Emperor, by the way let us call him a great Roman tyrant, Caligula, that wished that the people of Rome had had but one neck, that at one blow he might cut it off. And your proceedings hath been somewhat like to this: for the body of the people of England hath been (and where else) represented but in the Parliament; and could you have but confounded that, you had at one blow cut off the neck of England. But God hath reserved better things for us, and hath pleased for to confound your designs, and to break your forces, and to bring your person into custody, that you might be responsible to justice.

Sir, we know very well that it is a question much on your side pressed, By what precedent we shall proceed? Truly, Sir, for precedents, I shall not upon these occasions institute any long discourse; but it is no new thing to cite precedents almost of all nations, where the people (when power hath been in their hands) have made bold to call their Kings to account; and where the change of government

ment hath been upon occasion of the tyranny and misgovernment of those that have been placed over them. I will not spend time to mention either France, or Spain, or the Empire, or other countries; volumes may be written of it. But truly, Sir, that of the kingdom of Arragon, I shall think some of us have thought upon it, where they have the justice of Arragon, that is, a man, *tanquam in medio positus*, betwixt the King of Spain and the people of the country; that if wrong be done by the King, he that is the King of Arragon, the Justice, hath power to reform the wrong; and he is acknowledged to be the King's superior, and is the grand preserver of their privileges, and hath prosecuted Kings upon their miscarriages.

Sir, what the tribunes of Rome were heretofore, and what the Ephori were to the Lacedemonian state, we know, that is the Parliament of England to the English state: And though Rome seemed to lose its liberty when once the Emperors were; yet you shall find some famous acts of justice even done by the senate of Rome; that great tyrant of his time, Nero, condemned and judged by the senate. But truly, Sir, to you I should not need to mention these foreign examples and stories: If you look but over Tweed, we find enough in your native kingdom of Scotland: If we look to your first King Fergusus, that your stories make mention of, he was an elective King: he died, and left two sons, both in their minority; the kingdom made choice of their uncle, his brother, to govern in the minority. Afterwards, the elder brother giving small hopes to the people that he would rule or govern well, seeking to supplant that good uncle of his that governed them justly, they set the elder aside, and took to the younger. Sir, if I should come to what your stories make mention of; you know very well you are the hundred and ninth King of Scotland; for

not to mention so many Kings as that kingdom, according to their power and privilege, have made bold to deal withal, some to banish, and some to imprison, and some to put to death, it would be too long; and, as one of your own authors says, it would be too long to recite the manifold examples that your own stories make mention of. *Reges, &c.* (say they) we do create; we created Kings at first: *Leges, &c.* we imposed laws upon them. And as they are chosen by the suffrages of the people at the first; so upon just occasion, by the same suffrages they may be taken down again. And we will be bold to say, that no kingdom hath yielded more plentiful experience than that your native kingdom of Scotland hath done, concerning the deposition and the punishment of their offending and transgressing Kings; &c.

It is not far to go for an example near you: your grandmother set aside, and your father, an infant, crowned. And the state did it here in England: here hath not been a want of some examples. They have made bold (the Parliament and the people of England) to call their Kings to account: There are frequent examples of it in the Saxons time, the time before the conquest. Since the conquest there want not some precedents neither; King Edward the Second, King Richard the Second, were dealt with so by the Parliament, as they were deposed and deprived. And truly, Sir, whoever shall look into their stories, they shall not find the articles that are charged upon them, to come near to that height and capitalness of crimes that are laid to your charge; nothing near.

Sir, you were pleased to say the other day wherein they dissent; and I did not contradict it. But take all together, Sir; If you were as the charge speaks, and no otherwise, admitted King of England: but for that you were pleased then to alledge, how that almost for a thousand years these things

things have been, stories will tell you, if you go no higher than the time of the conquest; if you do come down since the conquest, you are the twenty-fourth King from William called the Conqueror, you shall find one half of them to come merely from the state, and not merely upon the point of descent. It were easy to be instanced to you; but the time must not be lost that way. And truly, Sir, what a grave and learned Judge said in his time, and well known to you, and is since printed for posterity, That although there was such a thing as a descent many times, yet the Kings of England ever held the greatest assurance of their titles, when it was declared by Parliament. And, Sir, your oath, the manner of your coronation, doth shew plainly, that the Kings of England, although it's true, by the law the next person in blood is designed, yet if there were just cause to refuse him, the people of England might do it. For there is a contract and a bargain made between the King and his people, and your oath is taken: And certainly, Sir, the bond is reciprocal, for as you are the liege Lord, so they are liege subjects. And we know very well that hath been so much spoken of, *Ligentia est duplex*. This we know now, The one tie, the one bond, is the bond of protection that is due from the sovereign; the other is the bond of subjection that is due from the subject. Sir, if this bond be once broken, farewell sovereignty; *Subjunctio trahit, &c.*

These things may not be denied, Sir: I speak it rather, and I pray God that it may work upon you heart, that you may be sensible of your miscarriages. For whether you have been, as by your office you ought to be, a protector of England, or the destroyer of England, let all England judge, or all the world, that hath looked upon it. Sir, though you have it by inheritance in the way that is spoken of,

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yet it must not be denied that your office was an office of trust, and indeed an office of the highest trust, lodged in any single person: For as you were the grand administrator of justice, and others were, as your delegates, to see it done throughout your realms; if your greatest office were to do justice, and preserve your people from wrong, and instead of doing that, you will be the great wrong-doer yourself; if instead of being a conservator of the peace, you will be the grand disturber of the peace, surely this is contrary to your office, contrary to your trust. Now, Sir, if it be an office of inheritance; as you speak of, your title by descent, let all men know that great offices are seizable and forfeitable, as if you had it but for a year, and for your life. Therefore, Sir, it will concern you to take into your serious consideration your great miscarriages in this kind.

Truly, Sir, I shall not particularize the many miscarriages of your reign whatsoever, they are famously known: it had been happy for the kingdom, and happy for you too, if it had not been so much known, and so much felt, as the story of your miscarriages must needs be, and hath been already.

Sir, that that we are now upon, by the command of the highest court, hath been and is to try and judge you for these great offences of yours. Sir, the charge hath called you a tyrant, a traitor, a murderer, and a public enemy to the commonwealth of England. Sir, it had been well if that any of all these terms might rightly and justly have been spared, if any one of them at all.

King. Ha:!

Ld. President. Truly, Sir, We have been told, *Rest est dum bene regit, Tyrannus qui populum opprimit*: and if so be that be the definition of a tyrant, then see how you come short of it in your actions, whether

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the highest tyrant, by that way of arbitrary government, and that you have sought for to introduce, and that you have sought to put, you were putting upon the people?

Whether that was not as high an act of tyranny as any of your predecessors were guilty of; nay, many degrees, beyond it?

Sir, the term Traitor cannot be spared. We shall easily agree it must denote and suppose a breach of trust; and it must suppose it to be done by a superior. And therefore, Sir, as the people of England might have incurred that respecting you, if they had been truly guilty of it, as to the definition of law; so on the other side, when you did break your trust to the kingdom, you did break your trust to your superior: for the kingdom is that for which you were trusted. And therefore, Sir, for this breach of trust, when you are called to account, you are called to account by your superiors. *Minimus ad majorem in judicium vocat.* And, Sir, the people of England cannot be so far wanting to themselves, which God having dealt so miraculously and gloriously for; they having power in their hands, and their great enemy, they must proceed to do justice to themselves and to you: for, Sir, the court could heartily desire that you would lay your hand upon your heart, and consider what you have done amiss, that you would endeavour to make your peace with God. Truly, Sir, these are your high crimes, Tyranny and Treason.

There is a third thing too, if those had not been, and that is Murder, which is laid to you charge. All the bloody murders that have been committed since this time that the division was betwixt you and your people, must be laid to your charge, that have been acted or committed in these late wars. Sir, it is an heinous and crying sin: and truly, Sir, if any man will ask us what punishment is due to a murderer, let God's law, let man's law speak. Sir, I will pre-

sume that you are so well read in scripture; as to know what God himself hath said concerning the shedding of man's blood: *Gen. 9. Numb. 35.* will tell you what the punishment is: and which this court, in behalf of the whole kingdom, are sensible of, of that innocent blood that has been shed; whereby the land stands still defiled with that blood; and, as the text hath it, it can no way be cleansed but with the shedding of the blood of him that shed this blood. Sir, we know no dispensation from this blood in that commandment, "Thou shalt do no murder:" we do not know but that it extends to Kings as well as to the meanest peasants, the meanest of the people; the command is universal. Sir, God's law forbids it; man's law forbids it: nor do we know that there is any manner of exception, not even in man's laws for the punishment of murder in you. 'Tis true, that in the case of Kings every private hand was not to put forth itself to this work, for their reformation and punishment: but, Sir, the people represented having power in their hands, had there been but one wilful act of murder by you committed, had power to have convented you, and to have punished you for it.

But then, Sir, the weight that lies upon you in all those respects that have been spoken, by reason of your tyranny, treason, breach of trust, and the murders that have been committed: surely, Sir, it must drive you into a sad consideration concerning your eternal condition. As I said at first, I know it cannot be pleasing to you to hear any such things as these are mentioned unto you from this court, for so we do call ourselves, and justify ourselves to be a court, and a high court of justice, authorized by the highest and solemaest court of the kingdom, as we have often said: and altho' you do yet endeavour what you may to discount us, yet we do take knowledge of ourselves to be such a court as can administer justice

justice to you; and we are bound, Sir, in duty to do it. Sir, all I shall say before the reading of your sentence, it is but this; The court does heartily desire that you will seriously think of those evils that you stand guilty of. Sir, you said well to us the other day, you wished us to have God before our eyes. Truly, Sir, I hope all of us have so: that God that we know is a King of Kings, and Lord of Lords; that God with whom there is no respect of persons; that God that is the avenger of innocent blood: we have that God before us: that God that does bestow a curse upon them that with-hold their hands from shedding of blood which is in the case of guilty malefactors, and that do deserve death: that God we have before our eyes. And were it not that the conscience of our duty hath called us unto this place, and this employment, Sir, you should have had no appearance of a court here. But, Sir, we must prefer the discharge of our duty unto God, and unto the kingdom, before any other respect whatsoever. And although at this time many of us, if not all of us, are severely threatened by some of your party, what they intend to do, Sir, we do here declare, That we shall not decline or forbear the doing of our duty in the administration of justice, even to you, according to the merit of your offence, although God should permit those men to effect all that bloody design in hand against us. Sir, we will say, and we will declare it, as those children in the fiery furnace, that would not worship the golden image that Nebuchadnezzar had set up, "That their God was able to deliver them from that danger that they were near unto:" But yet if he would not do it, yet notwithstanding that they would not fall down and worship the image. We shall thus apply it: that though we should not be delivered from those bloody hands and hearts that conspire the overthrow of the kingdom in

general, of us in particular, for acting in this great work of justice, though we should perish in the work, yet by God's grace, and by God's strength, we will go on with it. And this is all our resolutions. Sir, I say for yourself, we do heartily wish and desire that God would be pleased to give you a sense of your sins, that you would see wherein you have done amiss, that you may cry unto him, that God would deliver you from blood-guiltiness. A good King was once guilty of that particular thing, and was clear otherwise, saving in the matter of Uriah. Truly, Sir, the story tells us that he was a repentant King; and it signifies enough that he had died for it, but that God was pleased to accept of him, and to give him his pardon, "Thou shalt not die, but the child shall die: Thou hast given cause to the enemies of God to blaspheme."

King. I would desire only one word before you give sentence; and that is, That you would hear me concerning those great imputations that you have laid to my charge.

Ld. President. Sir, You must give me now leave to go on; for I am not far from your sentence, and your time is now past.

King. But I shall desire you will hear me a few words to you; for truly whatever sentence you will put upon me in respect of those heavy imputations, that I see by your speech you have put upon me; Sir, it is very true, that—

Ld. President. Sir, I must put you in mind: Truly, Sir, I would not willingly, at this time especially, interrupt you in any thing you have to say, that is proper for us to admit of; but, Sir, you have not owned us as a court, and you look upon us as a sort of people met together; and we know what language we receive from your party.

King. I knew nothing of that.

Ld. President.

Ld. President. You disavow us as a court; and therefore for you to address yourself to us, not acknowledging us as a court to judge of what you say, it is not to be permitted. And the truth is, all along, from the first time you were pleased to disavow and disown us, the court needed not to have heard you one word; for unless they be acknowledged a court, and engaged, it is not proper for you to speak. Sir, we have given you too much liberty already, and admitted of too much delay, and we may not admit of any farther. Were it proper for us to do, we should hear you freely, and we should not have declined to hear you at large, what you could have said or proved on your behalf, whether for totally excusing, or for in part excusing those great and heinous charges that in whole or in part are laid upon you. But, Sir, I shall trouble you no longer, your sins are of so large a dimension, that if you do but seriously think of them, they will drive you to a sad consideration of it, and they may improve in you a sad and serious repentance: And that the court doth heartily wish that you may be so penitent for what you have done amiss, that God may have mercy, at least wise, upon your better part; truly, Sir, for the other, it is our parts and duties to do that that the law prescribes. We are not here *jus dare*, but *jus dicere*. We cannot be unmindful of what the scripture tells us, "For to acquit the guilty is of equal abomination, as to condemn the innocent." We may not acquit the guilty. What sentence the law affirms to a traitor, tyrant, a murderer, and a public enemy to the country, that sentence you are now to hear read unto you; and that is the sentence of the court.

The Lord President commands the sentence to be read; make ah O yes, and command silence while the sentence is read.

O yes made: Silence commanded.

The clerk read the sentence, which was drawn up in parchment.

"Whereas the Commons of England in Parliament had appointed them an High Court of Justice, for the trying of Charles Stuart, King of England, before whom he had been three times convicted; and at the first time a charge of high treason, and other crimes and misdemeanors, was read in the behalf of the people of England," &c.

Here the clerk read the charge.

Which charge being read unto him, as aforesaid, he the said Charles Stuart was required to give his answer, but he refused to do, and so express'd the several passages at his trial in refusing to answer.

"For all which treasons and crimes this court doth adjudge, That the said Charles Stuart, as a tyrant, traitor, murderer, and a public enemy, shall be put to death, by the severing his head from his body.

After the sentence read, the Lord President said,

This sentence now read and published, it is the act, sentence, judgment and resolution of the whole court.

Here the court stood up, as assenting to what the President said.

King. Will you hear me a word, Sir?

Ld. President. Sir, you are not to be heard after the sentence.

King. No, Sir?

Ld. President. No, Sir; by your favour, Sir, Guard, withdraw your prisoner.

King. I may speak after the sentence—

By your favour, Sir, I may speak after the sentence ever.

By your favour, (Hold!) the sentence, Sir—

I say, Sir, I do—

I am not suffered for to speak: Expect what justice other people will have.

O yes: All manner of persons that have any thing else to do, are to depart at this time, and to give their attendance in the

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A COLLECTION OF TRIALS.

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Painted-chamber; to which place this court doth forthwith adjourn itself.

Then the court rose, and the King went with his guard to Sir Robert Cotton's, and from thence to Whitehall.

[His Majesty being taken away by the guard, as he passed down the stairs, the insolent soldiers scoffed at him, casting the smoke of their tobacco (a thing very distasteful unto him) in his face, and throwing their pipes in his way; and one more insolent than the rest, spitting in his face, his Majesty, according to his wonted heroic patience, took no more notice of so strange and barbarous an indignity, than to wipe it off with his handkerchief.

As he passed along, hearing the rabble of soldiers crying out, "Justice! justice!" he said, "Poor souls, for a piece of money they would do so for their commanders."

Being brought first to Sir Robert Cotton's, and thence to Whitehall, the soldiers continued their brutish carriage toward him, abusing all that seemed to shew any respect, or even pity to him; not suffering him to rest in his chamber, but thrusting in, and smoking their tobacco, and disturbing his privacy.

But through all these trials, (unusual to princes) he passed with such a calm and even temper, that he let fall nothing unbecoming his former Majesty and magnanimity.

In the evening, a member of the army acquainted the committee with his Majesty's desire, "That seeing they had passed a sentence of death upon him, and his time might be nigh, he might see his children; and Dr. Juxon, Bishop of London, might be admitted to assist him in his private devotions, and receiving the sacrament." Both which were at length granted.

And the next day being Sunday, he was attended by the guard to St. James's, where the bishop preached before him upon these words, "In the day when God shall judge

the secrets of all men by Jesus Christ according to my gospel.

Lane, 29 Jan. 1648. Painted-Chamber.

Three proclamations made. The court is called.

Commissioners present..

John Bradshaw, Serjeant at Law, Lord President of this court.

Oliver Cromwell	Owen Roe
Henry Ireton	Adrian Scroope
Sir Hardr. Waller, Kt.	Richard Deane
Valentine Wauton	John Okey
Thomas Harrison	John Hulson
Edward Whalley	William Goffe
Thomas Pride	John Jones
Isaac Ewers	Francis Allen
Richard Ingoldsby	Peregrine Pelham
Tho. Lt. Grey of Grooby	John Anslaby
Sir J. Bourchier, Kat.	William Say
Henry Martin	Henry Smith
William Purefoy	Humphrey Edwards
John Berkstead	John Venn
John Blackstone	Thomas Scott
Gilbert Millington	William Cawley
Sir Wm Constable, Bt.	Thomas Horton
Edmond Ludlow	John Life
John Hutchinson	Nicholas Love
Sir Mich. Livesey, Bt.	Vincent Potter
James Temple	Augustine Garland
John Dixwell	Simon Mteyne
Peter Temple	Daniel Blagrove
	Robert Tichbourne

Forty-eight Commissioners present.

Upon report made from the committee for considering the time and place of the executing of the judgment against the King, that the said committee have resolved, That the open street before Whitehall is a fit place, and that the said committee conceive it fit that the King be there executed tomorrow,

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morrow, the King having already notice thereof; the court approved thereof, and ordered a warrant to be drawn for that purpose. Which said warrant was accordingly drawn and agreed unto, and ordered to be engrossed; which was done, and signed and sealed accordingly, as followeth, viz.

At the High Court of Justice for the Trying and Judging of Charles Stuart, King of England, January 29, 1648.

Whereas Charles Stuart, King of England, is, and standeth convicted; attainted and condemned of high treason, and other high crimes; and sentence upon Saturday last was pronounced against him by this court, to be put to death by the severing of his head from his body, of which sentence, execution yet remaineth to be done: These are therefore to will and require you to see the said sentence executed in the open street before Whitehall, upon the morrow, being the thirtieth day of this instant month of January, between the hours of ten in the morning, and five in the afternoon of the same day, with full effect. And for so doing, this shall be your sufficient warrant. And these are to require all officers, soldiers and others, the good people of this nation of England, to be assisting unto you in this service.

Given under our hands and seals.

To Col. Francis Hacker, Col. Hunks, and Lieutenant-Col. Phray, and to every of them.

Sealed and Subscribed by

John Bradshaw	Richard Deane
Thomas Grey	Robert Tichbourne
Oliver Cromwell	Humphrey Edwards
Edward Whalley	Daniel Blagrove
Michael Livesey	Owen Roe

John Okey	William Purefoy
John Danvers	Adrian Scroope
John Bouchier	James Temple
Henry Ireton	Augustine Garland
Thomas Maleverer	Edmond Ludlow
John Blackstone	Henry Martin
John Hutchinson	Vincent Potter
William Goffe	William Constable
Thomas Pride	Richard Ingoldsby
Peter Temple	William Cawley
Thomas Harrison	John Berkstead
John Huse	Isaac Ewers
Henry Smith	John Dixwell
Peregrine Pelham	Valentine Wauton
Simon Meyne	Gregory Norton
Thomas Horton	Thomas Challoner
John Jones	Thomas Wogan
John Meor	John Ven
Hardress Waller	Gregory Clement
Gilbert Millington	John Downes
George Fleetwood	Thomas Waite
John Alured	Thomas Scot
Robert Lilbourne	John Carew
William Say	Miles Corbet
Anthony Stapely	

It was ordered, That the officers of the Ordnance within the Tower of London, or any other officer or officers of the store within the said Tower, in whose hands or custody the bright execution-axe, for the executing malefactors, is, do forthwith deliver unto Edward Dendy, Esq. Serjeant at Arms attending this Court, or his deputy or deputies, the said axe. And for their or either of their so doing, this shall be their warrant.

Directed to Col. John White, or any other officer within the Tower of London, whom it concerneth.

The Court adjourned till to-morrow morning at nine of the clock.

On

On Tuesday the 30th of January, his Majesty was brought through the Park on foot, from St. James's to Whitehall, the way being lined with soldiers, and a guard of halberdiers attending him. The King being permitted to remain some time in a room at Whitehall, attended only by Bishop Juxon, Mr. Nye, and several other fanatic fathers, offered to assist his Majesty in his last moments; but he thanked them for the tender of their service, and said, as they had so often wickedly prayed against him, he would not admit their praying with him at that time; however, if they pleased, they might pray for him. His Majesty, having finished his devotion, and taken a piece of bread and a glass of wine, was led by Colonel Hacker into the Banqueting-House, and from thence through one of the windows to the scaffold erected before it, where he found two executioners masked and dressed in loose frocks, who had provided cords and staples to drag him to his execution if he resisted; however, his Majesty, not at all terrified at these preparations, with a composed countenance, addressed himself to the people about him; declaring that he did not begin the war, and calling God to witness, to whom he was just going to give an account. That he never intended to encroach on the privileges of Parliament: He acknowledged the justice of God, however, in suffering him to die by an unjust sentence, he himself having suffered an unjust sentence to be executed (on the Lord Strafford). Then turning to Bishop Juxon, he said, that good man could witness for him, he had forgiven all the world, even those that had been the chief causers of his death: he wished they might repent, and prayed with St. Stephen, that this sin might not be laid to their charge; but told them they would never prosper, unless they gave God, the King, and the people their due; that they must give God his due, by regulating the

church according to the Scriptures, for which he proposed the calling of a free national synod: As to the King's due, the laws of the land would instruct them in that: And the people's due was liberty and freedom, which no man desired more than himself, and for the endeavouring to restore which he was now brought to that place. If he would have yielded to arbitrary sway, to have all laws, ecclesiastical and civil, changed according to the power of the sword, he needed not have come thither; and wished it might not be laid to their charge, that he was the Martyr of the people, concluding with a prayer, that they would take such courses as were for the good of the kingdom, and their own salvation.

The Bishop putting the King in mind, that it might be expected he should declare what faith he died in, his Majesty thanked him for putting him in mind of it, and said, he died a Christian, according to the profession of the church of England; as he found it left him by his father, of which the Bishop was a witness; and then preparing for the block, said, "I go from a corruptible to an incorruptible crown." Then he gave his George to the Bishop, and said, *remember*, with a particular emphasis; (which gave the regicides some uneasiness, till they understood the meaning of it from the Bishop;) then laying his neck upon the block, and stretching out his hands, which was the sign, one of the executioners severed his head from his body at one blow: but it was afterwards put into a coffin with his body, and exposed for several days, both in the palaces of Whitehall and St. James's, to the view of the people. His Majesty was in the forty-ninth year of his age, when he was thus put to death, by those sons of violence, who were not content with his death; but washed their hands in his blood, and gloried in the parricide.

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Bishop Juxon, who attended his Majesty on the scaffold, had all his papers taken from him, his scriptures, boxes, and his very pockets were searched; and he was threatened very severely, by the regicides, if he did not discover what the King meant by bidding him "remember;" to which the Bishop answered, that the King bid him remember to carry that supreme command to his son, that if ever he was restored to the crown, "He should forgive the authors of his father's death," which surely must have put them into some confusion, if they were not hardened beyond all sense of shame.

The King's servants afterwards made their application to the men in power, that the royal corps might be interred, with the Kings his predecessors, in Henry the Seventh's Chapel; but this they refused, al-

ledging, that multitudes of people would probably resort thither, out of a superstitious respect to his memory, which might be dangerous to their government; but at length they agreed it should be buried in St. George's Chapel at Windsor, where the Duke of Richmond, the Marquis of Hertford, the Earl of Southampton, and the Earl of Lindsey, saw it interred, in the same vault where King Henry VIII. and his Queen, Jane Seymour, lie; but Whitchcott, the Governor of the Castle, would not suffer the burial service to be used after the manner of the church of England. And here the corps of the royal martyr still remains, as appears by unquestionable evidence, notwithstanding the doubts of the Lord Clarendon, and some others, that it was removed elsewhere.

The Tryals of TWENTY-NINE REGICIDES, which begun October 9. 1660.

In the County of Middlesex. The Proceedings at Hicks's Hall, the 9th of October 1660, in Order to the Trial of the Pretended Judges of his late Sacred Majesty.

THE Court being sat, the Commission of Oyer and Terminer, under the Great Seal of England, was first read. It was directed to the Lords, and others hereafter named, viz.

Sir Tho. Aleyn, Knt.	Denzil Hollis, Esq.
and Bt. Lord Mayor of the city of London	Sir Frederick Cornwallis, Knight and Bart. Treasurer of his Majesties Household
The Lord Chancellor of England	

The Earl of Southampton, Ld Treasurer of England	Sir Charles Barkly, Knt. Comptroller of his Majesties Household
The Duke of Somerset	Mr. Secretary Nichols
The Duke of Albe-marle	Mr. Secretary Morris
The Marquis of Ormond, Steward of his Majesties Household	Sir Anthony Ashley Cooper
	Arthur Annesly, Esq.
The Earl of Lindsey, Great Chamberlain of England	The Lord Chief Baron
	Mr. Justice Foster
	Mr. Justice Mallet
	Mr. Justice Hyde
The Earl of Manchester, Chamberlain of his Majesties Household	Mr. Baron Atkins
	Mr. Justice Twisden
	Mr. Justice Tyrrel
	Mr. Baron Turner

The

The Earl of Dorset Sir Harbottle Grimston, Knt. and Bt.
The Earl of Berkshire Sir Wm. Wild, Knt.
The Earl of Sandwich and Bt. Recorder
Viscount Say and Seal of London
The Lord Roberts Mr. Serjeant Brown
The Lord Finch Mr. Serjeant Hale
John Howel, Esq.

Sir Geoffrey Palmer, his Majesty's Attorney General.

Sir Heneage Finch, his Majesty's Solicitor-General.

Sir Edward Turner, Attorney to his Highness the Duke of York.

Wadham Windham, Esq.

Edward Shelton, Esq. Clerk of the Crown.

The Grand Jury Sworn were,

Sir Wm. Darcy, Bt. Sir Edw. Ford, Knt.
Foreman Sir Thomas Prestwick
Sir Robert Bolles, Bt. Sir Wm. Coney, Knt.
Sir Ch. Sidley, Bt. Richard Cox, Esq.
Sir Lewis Kirk, Kt. Robert Bladwell, Esq.
Sir H. Littleton, Bt. Henry Mustian, Esq.
Sir Ralph Bovey, Bt. John Markham, Esq.
Edward Chard, Esq. Edw. Buckley, Gent.
Rob. Giddon, Esq. Fran. Bouchier, Gent.
John Fotherly, Esq. Edward Lole
Ch. Gibbons, Esq.
Thomas Gore, Esq. Hart, Cryer.

After proclamation for silence was made, it pleased Sir Orlando Bridgeman, Lord Chief Baron of his Majesty's High Court of Exchequer, to speak to the Jury as followeth.

The Lord Chief Baron's Speech.

Gentlemen,

YOU are the Grand Inquest for the body of this county of Middlesex; you may perceive by this commission that hath been
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read, that we are authorized by the King's Majesty to hear and determine all treasons, felonies, and other offences within this county: But because this commission is upon a special occasion, the Execrable Murther of the Blessed King, that is now a saint in heaven, King Charles the First, we shall not trouble you with the heads of a long charge. The ground of this commission was, and is, from the Act of Oblivion and Indemnity. You shall find in that act there is an exception of several persons, who (for their execrable treasons, in sentencing to death, and signing the warrant for the taking away the life of our said sovereign) are left to be proceeded against as traytors, according to the laws of England; and are out of that act wholly excepted and fore-prized.

Gentlemen, You see these persons are to be proceeded with according to the laws of the land; and I shall speak nothing to you, but what are the words of the laws. By the statute of the twenty-fifth of Edward the Third, (a statute or declaration of treason) it is made high treason to compass and imagine the death of the King. It was the ancient laws of the nation. In no case else, imagination, or compassing, without an actual effect of it, was punishable by our law. *Nihil efficit conatus nisi sequatur effectus*; that was the old rule of law: But in the case of the King, his life was so precious, that the intent was treason by the common law; and declared treason by this statute. The reason of it is this: In the case of the death of the King, the head of the commonwealth that's cut off; and what a trunk, and inanimate lump the body is, when the head is gone; you all know. For the life of a single man, there's the life of the offender, there's some recompence, life for life: but for the death of the King, what recompence can be made? This compassing and imagining the death of the King is known by some overt-act. Treason,

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it is in the wicked imagination, though not treason apparent; but when this poison swells out of the heart, and breaks forth into action, in that case it's high-treason.

Then what is an imagination or compassing of the King's death? Truly it is any thing which shews what the imagination is. Words, in many cases, are evidences of this imagination; they are evidences of the heart. Secondly, As words; so if a man, if two men do conspire to levy war against the King, (and by the way) what I say of the King, is, as well of the King dead, as living; for, if a treason be committed in the life of one King, it is treason, and punishable in the time of the successor; then, I say, in case, not only of words, but if they conspire to levy war against the King, there's another branch of this statute, the levying of war, is treason. But, if men shall go and consult together, and this is to kill the King, to put him to death, this consultation is clearly an overt-act to prove this imagination, or compassing of the King's death.

But what will you say then, if men do not only go about to conspire and consult, but take upon them to judge, condemn, nay, put to death, the King? Certainly, this is so much beyond the imagination and compassing, as 'tis not only laying the cockatrice's egg, but brooding upon it till it hath brought forth a serpent. I must deliver to you for plain and true law, "That no authority, no single person, no community of persons, not the people collectively, or representatively, have any coercive power over the King of England." And I do not speak mine own sense, but the words of the laws unto you. It was the treason of the Spencers in King Edward the Second's time, in Calvin's Case, second report. The Spencers had an opinion, that all homage and allegiance was due to the King, by reason of the crown, as they called it. And thereupon (say the books

and records) they drew out this execrable inference, (among others) That if the King did not demean himself according to right, because he could not be reformed by law, he might *per asportee*, that is, by sharp imprisonment; but this was adjudged horrid treason by two acts of Parliament.

Gentlemen, Let me tell you what our law-books say; for there's the ground, out of which (and the statutes together) we must draw all our conclusions for matter of government.

How do they stile the King? They call him, The Lieutenant of God, and many other expressions in the book of *Primo Henrici Septimi*; says that book there, the King is immediate from God, and hath no superior. The statutes say, That the crown of England is immediately subject to God, and to no other power. The King (says our books) He is not only *caput populi*, the head of the people; but *caput reipublice*, the head of the commonwealth, the three estates. And truly thus our statutes speak very fully. Common experience tells you, when we speak of the King, and so the statutes of Edward the Third, we call the King, Our Sovereign Lord the King: Sovereign, that is supreme. And when the Lords and Commons in Parliament apply themselves to the King, they use this expression, Your Lords and Commons, your faithful subjects humbly beseech. I do not speak any words of my own, but the words of the laws. Look upon the statute, *primo Jacobi*, there's a recognition, that the crown of England was lawfully descended on the King and his progeny.

(The statute itself was read, to which it is desired the reader will be referred.)

These are the words of the act. And this is not the first precedent; for you shall find it *primo Eliz.* cap. 3. They do acknowledge the imperial crown lawfully descended on the Queen, the same recognition with this. Before that (because we shall shew

shew you we go upon grounds of law in what we say) Stat. 24. Hen. VIII. cap. 12. "Whereas by fundry old authentic histories and chronicles it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world; governed by one supreme head and King, having the dignity and royal estate of the imperial crown of the same, &c."

Twenty-fifth of Henry VIII. cap. 21. There it is the people speaking of themselves, That they do recognize no superior under God, but only the King's grace.

Gentlemen, You see, if the King be immediate under God, he derives his authority from nobody else; if the King have an imperial power, if the King be head of the commonwealth, head of the body politick, if the body politick owe him obedience, truly I think it is an undenied consequence, he must needs be superior over them.

Gentlemen, This is no new thing to talk of an emperor, or an imperial crown. Do not mistake me all this while: It is one thing to have an imperial crown, and another thing to govern absolutely.

Gentlemen, The imperial crown is a word that is significative; you shall find in all statutes *primo Eliz.* and the first of King James, this, even in the act of judicial proceedings of this Parliament it is called an imperial crown. They that take the oaths of allegiance and supremacy; they swear, that they will, to their power, assist and defend all jurisdictions, privileges, preeminences, and authorities, granted or belonging to the King, his heirs, and successors, or annexed to the imperial crown of this realm. What is an imperial crown? It is that, which, as to the coercive part, is subject to no man under God. The King of Poland has a crown; but what is it? At his coronation it is conditioned with the people, That if he shall not govern them according to such rules they shall be freed

from their homage and allegiance; but the crown of England is, and always was, an imperial crown, and so sworn.

Gentlemen, As I told you, even now, the imperial crown is a word significative; that crown, which, as to the coercive part, is not subject to any human tribunal, or jurisdiction, whatsoever. And truly that this is such an imperial crown, though I have cited authorities ancient enough, you may find them much more ancient. I remember in the story of William Rufus (you shall find it in Matthew Paris and Eadmerus) some question was about investiture of Bishops, and the like, the King writes his letter, That, &c.

God forbid I should intend any absolute government by this. It is one thing to have an absolute monarchy, another thing to have that government absolutely without laws, as to any coercive power over the person of the King; for as to things or actions, they will fall under another consideration, as I will tell you by and by.

Gentlemen, Since this is so, consider the oath of Supremacy, which most men have taken, or should take. All men that enter into the Parliament-house, they are expressly enjoined by statute to take the oath of supremacy. What says that oath? We swear that the King is the only supreme governor within this realm and dominions. He is supreme, and the only supreme; and truly if he be supreme, there is neither major nor superior. I urge this the more, lest any person, by any misconstruction or inference which they might make from something that hath been acted by the higher powers, they might draw some dangerous inferences or consequences to colour or shadow over those murderous and traitorous acts, which afterwards they committed. They had no authority: But as I told you, though I do set forth this, and declare this to you, to let you know that the King was immediately subject to God; and

and so was not punishable by any person : yet let me tell you there is that excellent temperament in our laws, that for all this the King cannot rule but by his laws. It preserves the King, and his person, and the people's rights.

There are three things touching which the law is conversant, *Persona, Res & Actiones*; Persons, Things, and Actions. For the person of the King, he is the supreme head, he is not punishable by any coercive power; the laws provide for that. The King can do no wrong; it is a rule of law, it is in our law books very frequent; the 22d of Edward the Fourth, Lord Coke, and many others. If he can do no wrong, he cannot be punished for any wrong. The King, he hath the infirmities and weakness of a man; but he cannot do any injury, at least not considerable, in person; he must do it by ministers, agents, instruments. Now the law, though it provide for the King, yet if any of his ministers do wrong, though by his command, they are punishable. The King cannot arrest a man, as he cannot be arrested himself; but if he arrest me by another man, I have a remedy against this man, though not against the King; and so he cannot take away my estate. This as to the person of the King: He is not to be touched, "Touch not mine anointed."

I come to Things. If the King claim a right, the King must sue according to his laws; the King is subject to the laws in that case, his possessions shall be tried by juries. If he will try a man for his father's death, you will see he will try them by the laws. The law is the rule and square of his actions, and by which he himself is judged.

Then for Actions; that is such actions, whereby rights and titles are prosecuted or recovered, the King cannot judge in person betwixt man and man, he does it by his Judges, and upon oath; and so in all cases

whatsoever, if the King will have his right, it must be brought before his Judges. Though this is an absolute monarchy, yet this is so far from infringing the peoples rights, that the people, as to their properties, liberties, and lives, have as great a privilege as the King. It is not the sharing of government that is for the liberty and benefit of the people; but it is how they may have their lives, and liberties, and estates, safely secured under government. And you know, when the fatness of the olive was laid aside, and we were governed by brambles, these brambles, they did not only tear the skin, but tore the flesh to the very bone.

Gentlemen, I have done in this particular, to let you see that the supreme power, being in the King, the King is immediately under God, owing his power to none but God. It is true (blessed be God) we have as great liberties as any people have in Christendom, in the world; but let us own them where they are due; we have them by the concessions of our Princes. Our Princes have granted them; and the King, now; he in them hath granted them likewise.

Gentlemen, I have been a little too long in this, and yet I cannot say it is too long, because it may clear misunderstanding, so many poisonous opinions having gone abroad. To come a little nearer; If we consider, suppose there were the highest authority; but when we shall consider this horrid murder (truly I cannot almost speak of it, but—*Vox faucibus hæret*). When we shall consider, that a few members of the House of Commons, those that had taken the oath of supremacy, and those that had taken the oath of allegiance, that was to defend the King, and his heirs, against all conspiracies, and attempts, whatsoever, against his and their person, their crowns and dignities; not only against the Pope's sentence, as some would pretend, but, as otherwise,

otherwise, against all attempts and conspiracies, not only against his person, crown, and royal dignity, nor Popes sentence, not only in order to the profession of religion; but absolutely on otherwise, that is, whatsoever attempts, by any power, authority, or pretence whatsoever. I say, when a few members of the House of Commons, not an eighth part of them, having taken these oaths, shall assume upon themselves an authority; and authority, what to do? Shall assume to themselves an authority to make laws, which was never heard before; authority to make laws: What laws? A law for an High Court of Justice, a law for lives, to sentence mens lives; and whose life? The life of their sovereign: Upon such a King, who, as to them, had not only redressed long before, at the beginning of the Parliament, all grievances that were, and were imaginably, taken away, the Star-Chamber, High-Commission Court, and about shipping; such a King, and after such concessions that he had made in the Isle of Wight; when he had granted so much, that was more than the people would have desired. When these few Commons, not only without, but excluding the rest of the Commons; not only without, but excluding the rest, but rejecting the Lords too, that is, far. When these few Commons shall take upon them this authority, and by colour of this, their King, Sovereign Liege Lord, shall be sentenced, put to death, and that put to death, even as their King, and sentenced as their King; put to death as their King, and this before his own door, even before that place where he used in royal Majesty to hear Embassadors, to have his honourable entertainments; that this King shall be thus put to death at noon-day, it is such an aggravation of villainy, that truly I cannot tell what to say. No story, that ever was, I do not think any romance, any fabulous tragedy, can

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produce the like. Gentlemen, If any person shall now come, and shroud himself under this pretended authority, or such a pretended authority, you must know, that this is so far from an excuse, that it is an height of aggravation. The court of Common-Pleas is the common shop for justice; in that court an appeal is brought for murder, which ought to have been in the King's Bench; the court gives judgment, the party is condemned; and executed: In this case it is murder in them that executed, because they had no lawful authority. I speak this to you, to shew you, that no man can shroud himself by colour of any such false or pretended authority. I have but one thing more to add to you upon this head, and that is (which I should have said at first) if two or more do compass or imagine the King's death; if some of them go on so far as to consultation, if others of them go further; they sentence; and execute; put to death: In this case they are all guilty; the first consultation was treason. I have no more to add, but one particular, a few words.

As you will have bills presented against those for compassing, imagining, adjudging the King, so possibly you may have bills presented against some of those for levying war against the King: Levying of war, which is another branch of the statute of the 25th of Edward the Third. It was but declarative of the common law; it was no new law. By that law it was treason to levy war against the King. But to levy war against the King's authority you must know is treason too. If men will take up arms upon any public pretence; if it be to expulse aliens; if but to pull out Privy-councillors; if it be but against any particular laws, to reform religion, to pull down enclosures: In all these cases, if persons have assembled themselves in a warlike manner to do any of these acts, this is treason, and within that branch of levying

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war against the King. This was adjudged in the late King's time in Berstead's case, Queen Elizabeth's, Henry the Eighth's, former times, King James's time; much more, if men will go not only to levy war against the King, but against the laws, all the laws, subvert all the laws, to set up new laws, models of their own. If any of these cases come to be presented to you, you know what the laws are. To conclude, you are now to enquire of blood, of royal blood, of sacred blood, blood like that of the saints under the altar, crying *Quousque, Domine? How long, Lord, &c.* This blood cries for vengeance, and it will not be appeased without a bloody sacrifice.

Remember, but this, and I have done: I shall not press you upon your oaths; you are persons of honour; you all know the obligation of an oath. This I will say, that he that conceals or favours the guilt of blood, takes it upon himself, wilfully, knowingly, takes it upon himself; and we know that when the Jews said, *Let his blood be on us and our seed*, it continued unto them and their posterity to this day.

God save the King, Amen, Amen.

The Grand Jury returned the Indictment *Billa Vera*, Court adjourned to the Old-Bailey the 10th of October.

The 10th of October, 1660.

Sir John Robinson, Knight, Lieutenant of his Majesty's Tower of London, according to his warrant received, delivered to Mr. Sheriff the prisoners hereafter named, who were (in several coaches) with a strong guard of horse and foot conveyed to Newgate, and about nine of the clock in the morning delivered to the keepers of that prison, and thence brought to the Sessions-House in the Old-Bailey, London, where the Commissioners of Oyer and Terminer were in court assembled, and where

their indictment was publicly read by Edward Shelton, Esq. Clerk of the Crown.

Sessions-House in the Old-Bailey, Oct. 10, 1660.

The court being assembled, and silence commanded, the commissioner of Oyer and Terminer was again read. After which, the indictment charged them with compassing and imagining the death of the late King Charles I. And the sitting in judgment on his Majesty, and signing a warrant for the execution, were laid as overt-acts of that treasonable imagination.

Colonel Thomas Harrison was the first of the regicides that was brought upon his trial; who being arraigned and directed to plead guilty or not guilty, said they were vain words, and desired he might answer the charge his own way; however, he was prevailed on at length to plead not guilty.

Then the King's counsel opened the indictment, and produced five witnesses, who deposed, that Thomas Harrison, the prisoner, sat as one of the King's Judges, in the pretended High Court of Justice; and particularly on the 27th of January, 1648, when the sentence was read; and that he stood up with the rest, to express his assent to it; and one of the witnesses made oath, that the members of that pretended court, sitting in the Exchequer-chamber, and debating concerning the impeachment of the King, Harrison said, "Gentlemen; it will be good for us to blacken him; and that he heard Harrison tell the other regicides, that when he was bringing the King to London, the King asked him when they were in the coach together, what they intended to do with him; whether to murder him or not: And the prisoner answered, there was no intension to murder him; they had no such thoughts; "but the Lord hath reserved you for a public example of justice." The prisoner's hand also was proved

proved to the warrant for summoning the High Court of Justice, and to the warrant for beheading his late Majesty.

The Lord Newburgh deposed further, That Harrison commanded the party that brought the King from Hurst-Castle to London; and that his Majesty dining on the road, at Bagshot-Lodge, where the deponent then resided, Harrison gave orders for placing the centinels, and when they set forward for Windsor, Harrison ordered several of his officers to ride close to his Majesty, lest he should make his escape.

The prisoner said in his defence, that the matter he was charged with, was not done in a corner; the sound of it had reached most nations; and he believed the hearts of some had felt the terrors of that presence of God that was with his servants in those days; however, it had seemed good to God to suffer this turn to come upon them; that he had earnestly desired of God, the searcher of hearts, if he had done amiss, that he might receive some convictions on his conscience; but though he had sought it with tears many a time of that God, in respect of whom they and all nations were but as a drop of the bucket, to that moment he had rather received assurance of the justice of what he had done: And he believed, &c. &c. long, it would be made known from heaven, there was more of God imit, than men were aware of; that their Lordships knew what a contest there had been for many years, and how active many upon the bench had been. And being reprimanded by the court for his reflections, he went on, and said, That what he had done was out of conscience so the Lord; and he conceived, that what had been done by authority of Parliament, no other jurisdiction could meddle with; that they were the supreme authority, and those who acted under them could not be questioned by any power less than that. And whereas it had been said they usurped

that power, he said it was rather done "in the fear of the Lord. (Here he was interrupted again, and told, that such things were not fit to be vented in an assembly of Christians, to make God the author of all their damnable treasons). He proceeded, however, and said, That what he had done by authority of Parliament, he ought not to be questioned for: otherwise they were in a miserable condition, bound to obey those that were in authority; and yet to be punished when they obeyed; and desired counsel to that point. The court answered, If there was any difficulty, they should, and ought to be counsel for him; but that neither one or both the houses of Parliament, neither the people collectively or representatively, had any coercive power over their King; much less those few members of the Commons, after they had purged their house of the corrupt majority, as they called it: And Mr. Annesley put the prisoner in mind, That he was the man that forcibly removed the Parliament's guard, and placed other guards at the door of the house, who threatened and insulted the members; that after the house had resolved, That the treaty in the Isle of Wight was a ground for peace, forces were drawn down to the House of Commons, and none suffered to come in, but those the soldiers approved of; and all, who professed any duty to the King, were seized on by Harrison, and his fellows; and then the prisoner, and a small remnant of the house, declared against the vote that had passed for a treaty with his Majesty, and took upon them to exercise sovereign authority; and under these he would screen himself, as acting by authority of Parliament, when a majority of the House of Commons disavowed their proceedings: And had they been entire, they could have had no pretence to the supreme authority.

Then the Lord Chief Baron proceeded to direct the jury, and informed them, That

That if any of the overt-acts, laid in the indictment, was proved; either his consulting, advising, sitting in judgment, or sentencing the King, they ought to find the prisoner guilty; but here all these facts were proved, not only by witnesses, but by the prisoner's confession. He observed also, that the prisoner had the King, in his custody, and brought him prisoner from Hurst-castle, without any authority from those he called the Supreme power; and that if any man went about to imprison the King, it had been often adjudged an evidence of imagining and compassing the King's death: That the prisoner was so far from denying the facts, that he justified what had been laid to his charge. Whereupon the jury found him guilty, without going out of court; and sentence was pronounced on him as a traitor.

Then Adrian Scroop was brought to the bar, against whom six or seven witnesses deposed, That they had seen him sit as one of the late King's judges, in the pretended High Court of Justice; and particularly, on the 27th of January, when the sentence was read, and they all stood up to express their assent to it: his hand was also proved to the warrant for summoning the court, and to the warrant for beheading the King.

Mr Scroop said in his defence, That the High Court of Justice was erected by the Parliament, which was then the supreme authority, of the nation, and generally submitted to; and what he had done, was in obedience to that authority.

The Lord Chief Baron replied, That what he had offered in his defence, tended rather to aggravate, than extenuate his crime; that he (as well as others) was mistaken in the word Parliament; there was not one precedent of any other House of Commons assuming legislative power, or making an act to erect a court of justice, for the trial of their King: And besides, there were but forty-six, even of the Commons,

that sat in the house; two hundred and forty were excluded; so that they had no pretence to be called an house: That the Lords also were then in being, and rejected that pretended act, under which they would shelter themselves; and of the forty-six Commoners that remained in the Lower-house, there were not more than five or six, and twenty that were for erecting that court; and these men had taken the oaths of allegiance and supremacy, and sworn to defend the King, his crown and rights, against all persons whatsoever; that they had acknowledged, in the oath of supremacy, that the King was the supreme governor of these nations; and sworn that they would maintain all the privileges, immunities, and pre-eminences, annexed to the imperial crown of this realm; and those who pretended that men, by breaking through all the ties and obligations of allegiance, could gain any lawful authority, must speak against the light of their consciences, and all laws, divine and human. Mr. Scroop said, If he had been misled, he was not the only person. He saw a great many faces that were misled as well as himself; and he hoped an error in judgment would not be accounted malice; he never went to work with a malicious intent, or bore malice to his late Majesty; but the Lord Chief Baron told him, that though this might be some excuse for him before God, in law the fact itself implied malice, and the jury, without going out of court, found him guilty.

Then Mr. John Carew was brought to the bar, and the King's counsel having opened the indictment, the witnesses deposed, That the prisoner sat as one of the late King's judges, in the pretended High Court of Justice; that his hand was to the warrant for summoning the said court, and to the warrant for beheading his late Majesty; and that the prisoner was a member of the Long Parliament.

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Mr. Carew, in his defence, seemed much offended, that it was said in the indictment, he had not the fear of God before his eyes, but was moved by the devil to murder the King; and averred, that what he had done, was in the fear of the Lord, and in obedience to his holy and righteous laws: He confessed that he did consent to be one of the late King's judges; first, in obedience to the Lord; and secondly, in obedience to that which was then the supreme authority of the nation; That the matter in question had been controverted in the face of the whole world; and the Lord had given an answer upon solemn appeals; (and was entering upon the grounds and reasons of the war) but the court let him know, that they must not hear him make discourses in justification of a horrid and notorious treason; and as to his having acted in the fear of the Lord, they bid him remember that the devil appeared sometimes as an angel of light: And that he should not be suffered to cast in bones of contention, to revive those differences which were but just laid asleep. That this treason had no relation to what was done by the Lords and Commons, at the beginning of the war; for the act, under which he pretended to screen himself, was not made by the authority of either house; there were but forty-six of the Commons in the house, when it was debated; and not more than twenty-six that voted it; which could never be understood by any one to be an act of Parliament; it was no more than an order of a small remnant of the Commons, after they had excluded a vast majority.

The prisoner replied, Since they would not suffer him to open the nature of these things, and the grounds he went on, which satisfied his own conscience, that what he did was from the Lord, he left his cause to the Jury; telling them, that the authority he spoke of was a rightful authority, it was the supreme power: It was well known

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what they were; concluding, he had desired to speak the words of truth, and soberness, but was prevented. Then the court having observed to the jury, that the treason was fully proved, both by witnesses, and his own confession, they found him guilty, without going from the bar: After which the court adjourned.

The court sitting again the 12th of October, Thomas Scot was brought to the bar, against whom the indictment being opened, and the jury sworn, several witnesses deposed, That the prisoner sat as one of the late King's judges, in the pretended High Court of Justice, and particularly on the 27th of January, when all the members stood up, to express their assent to the sentence: Another witness deposed, That his hand was to the warrant for beheading the late King. Sir Theophilus Biddolph deposed, that he heard Mr. Scot say, in Richard's Parliament, That he sat as one of the King's judges; and he was so far from repenting of it, that he desired this inscription might be upon his tomb, (viz.) "Here lies Thomas Scot, who adjudged to death the late King." Colonel Copley testified the same thing; and that the prisoner added, "He hoped he never should repent of the King's death."

The Lord Mayor elect deposed, That on the last day of the sitting of the Parliament, a little before his Majesty's return to England, Mr. Scot, seeing the house must break, said, "Their heads must be laid to the block, if there was a new Parliament: I confess (said he) I had a hand in putting the King to death, and I desire all the world may take notice of it; and when I die, that it may be written on my tomb. I do not repent of any thing I have done; if it were to do, I could do it again. William Lenthall, Esq; also deposed, That, the house being about to dissolve itself, Mr. Scot made a speech, justifying the putting the King to death; but he did not remem-

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ber the particular expressions mentioned by the other witnesses. Then the Lord Mayor further deposed, that this was the conclusion of Mr. Scot's speech in the house, "Being it is your pleasure to have it so (the house dissolved), I know not how to hinder it; but when that is done, I know not where to hide this hated head of mine." Mr. Baker also deposed, that discoursing with Mr. Scot, in the time of Richard's Parliament, he said, "He had cut off one tyrant's head, and he hoped to cut off another."

The prisoner said in his defence, that it was a breach of privilege to prosecute him in an inferior court, for what he had said, or done in Parliament; but the court informed him, that for treason, or felony, committed in the Parliament-house, there was no privilege that could prevent his being tried for them in the courts of common law; but that there did not want other evidence of his compassing and imagining the King's death.

Then Mr. Scot proceeded in his defence, and averred, that he never said, "He hoped he should never repent of the King's death." But on the contrary, he had often, by prayers and tears, besought the Lord, that if there were any iniquity in it, he would shew it him; that it was by the command and authority of a parliamentary power he sat as one of the King's judges; and this must justify him; whatever the nature of the fact was: That this court could not take cognizance whether they were a legal Parliament, or not; and he did not know, but it might be as fit for that Parliament to make laws, as the last, being called by the keepers of the liberties of England: That if they were not properly a Parliament, they were the legislative power, and their acts binding; that if two estates might exclude the third, as they had done the Bishop's; if the second did not continue to exercise their trust; they that were in, by occupancy might have a title to the whole:

and continued to insist he had a parliamentary authority, a legislative power, to justify him.

The court replied, That these things had been urged already, and that no single person or community, neither the people collectively, or representatively, had any coercive power over the King. That the assembly, who made that pretended act, were not an eighth part of the Commons house: That the house of Lords was then sitting, and rejected it; and therefore there was nothing like parliamentary authority to justify him. That forty highwaymen, met together at Shooter's-hill, might as well pretend to Parliamentary authority, as that little convention at Westminster: That the vulgar acceptance of the word Parliament, had led many into mistakes; but that nothing could properly be said to be done by parliamentary authority, but what was done by King, Lords, and Commons: And as to what the prisoner mentioned, concerning the ejecting the Bishops, this was not at all to the purpose; for that act was made by the consent of King, Lords, and Commons: And,

Mr. Annesley put the prisoner in mind, that when the people appeared jealous that they intended to alter the government, the Parliament called it a black scandal; cast upon them: And that the two houses caused a declaration to be affixed on all the churches in England; That they held the government of King, Lords, and Commons, to be the fundamental government of this kingdom. Then the prisoner claimed the benefit of his Majesty's pardon; but the court replied, it was very odd to talk of a pardon, after such a justification; that the King's proclamation could not be pleaded in bar to the proceedings of the court: They could take no notice of a pardon that was not under the Broad-seal; though they did not doubt his Majesty would inviolably make it good, if he appeared to be within it.

it. Then the Lord Chief Baron directed the jury, and took particular notice of the aggravating speeches of the prisoner, his justifying the King's murder, and wishing the action might be engraven on his tomb; and the jury thereupon found him guilty.

Then Gregory Clement was brought into court, and pleaded guilty.

John Jones also, being set to the bar, offered to make a partial confession, which the court not accepting, the jury was sworn, and the witnesses produced, who deposed they saw the prisoner sit as one of the late King's judges, in the pretended High Court of Justice. His hand also was proved to the warrant for summoning the court, and to the warrant for beheading the King: And the jury found him guilty.

Then all the prisoners that had been tried after Harrison, were set to the bar; and it was demanded what they had to say, why judgment should not pass upon them: To which they generally answered, they threw themselves on the King's mercy: And the Lord Chief Baron made a speech to abate on the occasion, in which he set the horrid crime the prisoners were convicted of, in a proper light; he told them the King they had murdered, was a person of eminent parts and virtues, that would have rendered him admired even in a private station; that his clemency appeared in the beginning of his reign; and, if they looked back, they would find the people enjoyed greater peace and prosperity in his days, than in the reigns of former princes; that but one nobleman had been put to death in his time, and that for an offence not to be named. That they might remember the King had, before the war, redressed every grievance they could complain of; the Star-chamber, High-commission, Ship-money, the claim of Stannery, &c. That they would do well also to reflect what concessions his Majesty made at the Isle of Wight; how he wooed and courted the people to obtain

peace: And that they should kill their King, and such a King, they ought to lay it to heart, and consider with themselves; for, tho' they pretended conscience, they should remember what our Saviour said, That "the time will come, when they will persecute you and kill you, and think they do God good service." That there was such a thing as spiritual pride, and men might be overrun with an opinion of their own holiness, and go by pretended revelations, and say they prayed about such a thing, and found no remorse or reluctance; as the man in Shropshire, who murdered his father and mother, when he was questioned for it, alledged, he had prayed against it, and could not understand it to be a sin. And therefore he exhorted the criminals to try their spirits, and examine the fact by the word of God, and not think every fancy and imagination to be conscience: After which, the usual sentence in high treason was passed upon them, and the court adjourned.

The court meeting again the 14th of October, John Cook, Solicitor to the Regicides, who preferred the charge of high-treason against the late King, was brought to the bar: And not challenging any of the pannel, the first twelve were sworn of the jury. Then the Solicitor-general opened the indictment, and observed that this was the man, who exhibited that wicked Instrument, called, "A charge of High-treason," against his late Majesty in the name of all the people of England; that he aggravated the charge, and would not suffer his Majesty to speak in his defence; told the King he endeavoured to spin out delays, and desired the charge might be taken *pro confesso*; that this was the man that pressed the pretended court to give judgment against the King; and demanded that wicked judgment before it was pronounced; and though he had acknowledged his Majesty to be a wise and gracious King, yet declared that he must die, and monarchy with him;

him; that this was the prisoner's part, who had also received wages, and a reward for his iniquity. Then the witnesses were called, who deposed, That the prisoner exhibited an impeachment, or parchment-writing, to the pretended High Court of Justice, which was called "A charge against the King;" and the said charge being now produced, it was proved that Cook's hand was subscribed to it; that he often interrupted his Majesty, and prayed that the charge might be taken *pro confesso*; and for several days pressed for judgment against his Majesty.

It was testified also, that Cook charged his Majesty with being guilty of the highest treasons and crimes, that ever were acted on the theatre of England, and pressing that judgment might be given against his Majesty, said, "That it was not so much he, as the innocent and precious blood that had been shed, that cried for judgment against the prisoner at the bar (the King). And one Starkey, of Grey's Inn, deposed, that, discoursing with Cook about his being made Solicitor-general, he answered, "he was serving the people; that he would see strange things; and that he must wait upon God." He did acknowledge the King was a wise and gracious Prince; but said, he must die, and monarchy with him.

But Cook cross-examining Nutley, one of the witnesses, Nutley deposed, that he heard the prisoner say, He hoped they did not intend to take away the King's life; that he (the prisoner) laboured against it; and they told him, they only intended to bring him to submit to the Parliament.

The prisoner further said in his defence, That the words he used at that proceeding, were not his own; he was directed what he should speak, and he hoped he might make much the same plea. St. Paul did, "That against Cæsar or against the law, he had not offended at all;" for first, he was commanded to do what he did, and acting only within

his own sphere as a counsellor, by the command of the then supreme power, he could not be guilty of treason: Secondly, words could not amount to treason; and though it was said, his hand was to the impeachment, he thought that was not well proved; He insisted further, That one who writes or speaks words dictated by another, (though they might be in their own nature treasonable) yet they were not treason on the writer or speaker, because they did not discover a traitorous heart; and he appealed to God, if he used one irreverend expression towards his Majesty, or styled him, The prisoner at the bar, as the witness had sworn: That a counsellor was to make the best of his client's cause, and leave it to the court; and counsellors did frequently engage in business, before they rightly understood the fact. He appealed to the counsel, if they had not many times been sorry, that a verdict had been given for their client, when they discovered the right lay on the other side; and this might be his case. Had it been a time of peace, he acknowledged this would have been treason; but his Majesty being in the power of the army, the drawing up a charge against him; and desiring justice, and that he might be brought to a speedy trial, in order to his acquittal, was rather a service to his Majesty, than treason against him: He urged further, That what he had done in that matter, was for his fee, and not of malice; though it might be called *avaritia*, it could not be called *malitia*; he did nothing judicially, but ministerially: but conscious his defence was very weak, he said he laid hold on his Majesty's declaration at Breda, wherein he promised to pardon all who were not excepted in a free Parliament; and he observed, that this convention, not being called by the King's writ, was not such a Parliament, as could make the exception; concluding, that human justice did never punish so much for expiation as prevention, that others might be

be deterred from committing such acts; that now all things were settled, there could be no danger in sparing him, the like case could never happen again.

The King's counsel, in their reply to this defence, said, That the prisoner mistook his charge, if he thought it was only for words; it was for compassing and imagining the King's death; and the evidence of that charge was, his meeting in an assembly of the regicides, and the part he bore in that assembly: Nor was it a general rule, that words were not treason; for if a man declare the imagination of his heart, by exhorting and persuading men to kill the King, there could not be a greater overt-act than such words, or a clearer evidence of his traitorous imagination. And as to his innocence in simply demanding justice, they were to observe, that the subject-matter was a charge of high-treason against the King; he prayed that the King, as a traitor, might be brought to justice; pressed that the charge might be taken *pro confesso*. And whether Mr. Cook could intend this, in order to the acquittal of his Majesty, he left the jury to determine.

As to the prisoner's laying hold on his Majesty's letter or declaration from Breda, that could not amount to a pardon, not being under the broad seal; neither would the words it contained have amounted to a pardon, if they had been under the broad seal: Besides, it appeared by the King's letter, that he intended such as should be excepted by that very Parliament his letter was directed to, and the prisoner was expressly excepted by name; his Majesty, therefore, was not obliged even in honour to spare him.

That the jury should consider the case as their own: The prisoner had exhibited a charge against his late Majesty, in the name of all the people of England, of whom they were part, and they ought to let the world know, that the people of

England had no hand in that charge; that they should consider how the prisoner had hunted after the King's life; how he had fished for evidence against him, aggravated the charge, was afflicted at the delays, and angry when he was interrupted.

And as to the prisoner's saying, he pleaded for his fee, Judas too had thirty pieces of silver, for which he hanged himself; and it was the highest disgrace he could throw upon the long robe to shelter himself under his profession; that indeed it was an aggravation of his crime, that he, who knew the law so well, should so grossly transgress it; that Mr. Cook, in advising the act, was as instrumental, as much a traitor, as the man in the frock that did the execution; that a counsellor indeed was not always bound to know the Judge's patent; but here was no colour of a legal proceeding, nothing but a mock court of justice, such a one as Mr. Cook never met with in all his reading; they knew of no law under heaven for putting the King to death, though they endeavoured to shelter themselves under a colour of justice, to do the most execrable treason in the world.

The Lord Chief Baron in summing up the evidence, observed, that when Cook demanded justice against the King, he had charged him as a tyrant, traitor, murderer, and common enemy; that those, who spit in the King's face, also demanded justice; but every man knew what they meant by justice; that the prisoner had also urged, "That it was not so much he, as the blood that had been shed, that cried for judgment," and whether the prisoner meant a judgment for the King's acquittal, he left to the jury. He took notice also of the prisoner's answers to Starkey, when he expostulated with him about being concerned in the King's murder, (viz.) "You shall see strange things; you must wait upon God:" This, the Chief Baron observed, was then the canting language of those who

were about to commit some horrid impiety; and from that other expression, "The King must die, and monarchy with him," it appeared it was monarchy and government they hated: Many of those who sat upon the late King, acknowledged he was a gracious Prince; they did not hate his person any more than the prisoner, but monarchy was the thing they would behead.

That as to his having acted by the authority in being, and citing the 11th of Henry II. which provides, That he who serves a King for the time being in his wars, shall not be punished; that act was expressly against him: For that act was made for the preservation of a King *de facto*, much more of a King *de jure*; and the person they had stiled their prisoner, they had owned to be their King; they charged him as King, and sentenced him as King. That King Henry VIIth's care was to preserve even a King *de facto*, and kingly government; it was not in favour of an antimonarchical government. The regicides proceeded against their own King, as their King; calling him in their charge, Charles Stuart, King of England; and therefore there was no colour that the prisoner should have any benefit of the letter, or the equity, of the 11th of Henry VII.

However, Mr. Cook, being indulged the liberty of replying to the Chief Baron, said, Though their Lordships were pleased to lay no weight on the orders or authority by which he acted; he did then act truly and conscientiously; and thought that authority would have borne him out; though the court were pleased to look upon them as a parcel of people without authority, his judgment was not yet convinced as to that point; and that all the words he spoke were dictated to him, even those, "That it was not so much he, as the innocent blood, that cried for justice."

To which the Chief Baron said, He made his case rather worse; that they had delivered their opinions already; that the acting by such an authority, was so far from being an extenuation, that it was an aggravation of the crime; that his expressing his approbation of that power, and acting under it, were the very things with which he was charged: And the jury, after a very short recess, brought in the prisoner Guilty.

Hugh Peters, Cromwell's Chaplain, being brought next upon his trial, made no challenges to the jurors; whereupon the first twelve of the pannel were sworn, and charged with the prisoner: Then the King's counsel produced their evidence. And first, Dr. William Young deposed, That Hugh Peters, the prisoner, lay sick at his house in the year 1649, and that he remained in his family six or seven weeks after his recovery, there being a great intimacy between them; that the prisoner, about that time, told the deponent, "He was sent over from New-England to foment a civil war, and drive on their reformation."

That he was afterwards sent over to Ireland by the Parliament, to carry on their designs there, and that he had spent near 3000l. in that service, for which he had only received a small pittance, in land, out of the Lord Worcester's estate; that the prisoner used to say, while he resided with the deponent, "It would never be well till the Lords, the Levites, and the lawyers, were put down;" that the prisoner was a Colonel under Cromwell (as well as a preacher), and having an authority to raise forces for the war in Ireland, would have had the deponent accept a commission to serve under him; that the prisoner informed the deponent, when the late King was taken from Holmeby-House, the Parliament had a design to have seized Cromwell and himself; but having notice of it, they made their escape out of London, riding

riding hard for it as far as Ware, where they considered how they should dispose of the King; and came to a resolution, "They would try him for his life, and cut off his head."

Mr. Starkey deposed, That the headquarters being at Windsor, a little before the King's trial, Ireton lay at his father's house there; and that Cromwell and the general officers used to hold their councils of war at his father's; that after these councils rose, there used to be a private consultation, at which Cromwell, Ireton, the prisoner, Colonel Rich, and a fifth person, assisted; and they generally sat up till two or three in the morning; and he believed it was this private cabal that contrived the business against the King; that the prisoner frequently came with Ireton, and dined and supped with him, at his father's, with the family; and talking of the King, Peters used to say, "The King was a tyrant and a fool, and not fit to be a King; and that it was a dangerous, chargeable, and useless office;" that Ireton and Peters being at supper at his father's, when news came that the King was made prisoner in the Isle of Wight, his father, instead of saying God save the King, Prince, and realm, as he usually did after his grace, (at which Ireton and Peters used to laugh) said, "God save the King's most excellent Majesty, and preserve him out of the hands of all his enemies: Whereupon Peters said, "Old gentleman, your idol will not stand long."

Walleley deposed, That he saw Peters at the consultations with the regicides in the Painted-Chamber, before the King's trial; that when the King was brought to London, he saw him riding in a triumphant manner before the coach the King was in; And at another time, he saw Peters marshalling the soldiers in St. James's-Park, and heard him say, "If we can but keep

up our army seven years longer, we need not care for the King and all his posterity."

Simpson deposed, That he saw the prisoner at several consultations concerning the King; and that, at the King's trial, he heard him bid Colonel Stubberd to cry out, "Justice, justice, against the traitor at the bar;" that the soldiers cried out as they were directed; and, as the King was going back to Cotton-house, some of them spit in his face, which he wiped off, and smiled.

Richardson deposed, That he saw the prisoner standing in the High Court of Justice; that he commended Bradshaw's carriage; and holding up his hands, said, "This is a most glorious beginning of the work." And Sir Jeremy Whichcot deposed, he heard the prisoner say, "I cannot but look upon this court with great reverence, for it doth resemble, in some measure, the trials that shall be at the end of the world by the saints;" that the prisoner seldom spoke of the King, but he called him tyrant; and said, he would have preached before him (the King); but the poor wretch would not hear him.

Nunnally deposed, That he saw Peters in the Banqueting-house, about an hour before the King was beheaded; that he went out upon the scaffold, and came off again; and whispering the joiner who erected it, the joiner immediately knocked down four staples upon the scaffold; that after the King's head was cut off, the deponent saw the vizards go into a chamber, and he thought he saw Peters come out of the same chamber an hour afterwards; but he was sure he saw him go with the hangman to take water.

Stephen Clough deposed, That Peters, in his prayer before a council of officers at Westminster, said, "O Lord, what a mercy is it to see this great city fall down before us! And what a stir is there to bring this great man to trial; without whose blood

blood he will turn us all into blood if he reign again!

Beaver deposed, That the prisoner preaching before the two houses, on a fast-day, a little before the act was made for the King's trial, he said, "It was a very sad thing, that it should be made a question among us, as among the old Jews, Whether our Saviour Jesus Christ must be crucified; or that Barabbas should be released, the oppressor of the people: O Jesus (said he) where are we, that that should be a question? And because you should think, my Lords and gentlemen, that it is a question, I tell you it is a question: I have been in the city, which may very well be compared to Jerusalem; and I profess these foolish citizens, for a little trading and profit, will have Christ (pointing to the red-coats on the pulpit-stairs) crucified, and that great Barabbas, at Windsor, released. I do not much mind what the rabble say; but I have been with my brethren, the clergy, in the assembly, and I perceive they are for crucifying Christ also, and releasing Barabbas. O Jesus, what shall we do now!" Then addressing himself to the Lords and Commons, he said, "You are the Sanhedrim, the great council of the nation; therefore you must be sure to do justice; it is from you we expect it. You must not only be the inheritors of your ancestors; but you must do as they did: They opposed tyrannical Kings, and destroyed them. It is you that we chiefly expect justice from. Do not prefer the great Barabbas, murderer, tyrant and traitor, before these poor hearts (pointing to the soldiers again):" And that for two or three hours he harangued his audience, pressing them to bring the King to a speedy trial, and to punish him capitally.

Mr. Chace deposed, That he heard the prisoner preach before Cromwell and Bradshaw, on the 20th. of January, 1648. on that text in the Psalms, "Bind your Kings in chains, and your nobles in fetters of

iron:" And observed, that the next Psalm had twelve hallelujahs; which were intended, he said, to express their joy, That Kings were bound in chains, &c. He told them also the common story of the Mayor that laid the Bishop's man by the heels for being drunk; and when the Bishop complained of it, the Mayor answered, There was an act of Parliament for it, and neither the Bishop nor his man were excepted out of it. And so (says Peters) here is a great talk in the world; what, will you cut off the King's head; the head of a protestant Prince? Turn to your Bibles, and you shall find, "Whosoever sheds man's blood, by man shall his blood be shed." As the Mayor said of the Bishop and his servant, I see neither King Charles, nor Prince Charles, nor Prince Rupert, nor Prince Maurice, nor any of that rabble excepted out of it; and added, "This is the day that I, and many saints of God, have been praying for these many years:" And the deponent observed, that Cromwell laughed heartily at these flights.

Tongue deposed, That he heard the prisoner preach at Whitehall, the 21st of January, 1648, on that passage, "Bind your Kings in chains, &c." And said, he hoped to see such another day as the day before (when the King's trial began): That he blessed God the lower house was purged; and assured them the house of Lords would down suddenly.

The prisoner in his defence, said, he was sent from New-England, to solicit the affairs of that country here; and indeed, at the importunity of the London ministers, after his arrival, he was active in the troubles that followed; but they were much deeper engaged in that affair than he was: He was sorry to hear himself charged with that behaviour towards the late King, and begged pardon for his folly and weakness; but said, he had no malice or mischief in his heart against him; that he had always acted

acted with honour and respect towards his Majesty; particularly when he was at Windsor; and had proposed three ways to his Majesty to extricate himself out of the difficulties he was in: but he did not approve of them; that he was none of those who sat in the High Court of Justice, or brought the King to that unhappy end: And lastly, he observed, that there was but a single witness to any one fact.

To which the King's counsel replied, That some facts had been undeniably proved against him; that the meeting and consulting together about the King's death; or the giving aid, comfort, or encouragement to those traitors, made him guilty of the whole charge, in the eye of the law; though he did not sit in that High Court, or sentence the late King: And that, whatever speeches he had uttered, either in the pulpit, or out of it, tending to sedition and rebellion, were such overt-acts as proved the treasonable imagination of his heart, with which he was charged; that though there ought to be two witnesses in treason, there need not be two to every fact; but in his case there had been several witnesses produced to one fact; so that this objection carried no manner of weight with it.

That his being in arms against his Majesty, had not only been proved by several witnesses; but he had confessed it. It was proved also, that he had called the day of his Majesty's trial, A glorious day, and resembled it to that great day, wherein the saints should judge the world; that he had often prayed for it also; so that no man could be said more justly to have conspired and contrived the death of the King than this miserable priest had done: The honour of the pulpit therefore ought to be vindicated. His death would preach better than his life had done; it might be a means to convert many a deluded man, whom his preaching had seduced; for several had been brought to that bar, who

averred, that what they had done, was in the fear of the Lord; and now it appeared who taught them, and led them into these pernicious errors; they hoped therefore the court would make an example of this carnal prophet: And the jury being withdrawn, in a very little time found the prisoner guilty. Whereupon the King's counsel moved, that Cook and Peters might receive judgment together: And the Lord Chief Baron having made a speech to the prisoners, wherein he observed they had had a liberal education, and therefore could not be ignorant how grossly they had offended against the laws of God and man, by being instrumental in the King's murder, pronounced sentence on them as traitors: And then the court adjourned.

On the 15th of October, Daniel Axtel was brought to the bar; and a jury being sworn, and charged with the prisoner, the King's counsel opened the indictment and the evidence; after which, the witnesses were produced, who deposed, That Colonel Stubbard and Axtel commanded the guards that were drawn up in Westminster-hall, for the security of the pretended High Court of Justice, at the King's trial; that upon exhibiting the charge against the King, in the name of all the Commons of England, a lady (said to be the Lady Fairfax) cried out, "It was a lie; not a quarter of the people were concerned in it: Oliver Cromwell was a rogue and a traitor:" whereupon the court called to the guard, and Axtel their commander, ordered some of his soldiers to present their pieces at the lady, and bid her unmask. Other witnesses deposed, that Axtel said, "Down with the whorls: shoot them;" that he was more active than any of the officers, and stood laughing with his soldiers, and scoffing aloud when the King urged to be heard; and when the King bid his pretended Judges remember he was their lawful King, Axtel ordered the soldiers

diers to cry out, justice, justice! and beat those that refused; and that the last day of the trial, he made his soldiers cry, execution, execution! A witness also deposed, that the prisoner commanded a company of soldiers in the Banqueting-house, during the King's execution; and that he was the man that sent for the executioner. Another witness testified, that Axtel said Hewlet beheaded the King: And Colonel Huncks made oath, that Cromwell bidding him (the deponent) sign the order for the King's execution, and threatening him for refusing it, Axtel said to the deponent, "I am ashamed of you; the ship is now coming into harbour, and will you strike sail before you come to anchor?"

Axtel, in his defence, said, that Huncks was a perfect stranger to him; and that he did not remember his having said any such words as he had testified; that the statute of the 25th of Edward III. on which he was indicted, concerned only private persons, who compassed the King's death: But here a war was entered into, an army raised by authority of Parliament, who had declared the militia was of right in them; that he acted by commission from the Parliament's General; a Parliament called by the King's writ, chosen by the people, and by an act that could not be dissolved but by their own consent. That this Parliament was in being when the King's trial happened, and was not yet legally dissolved: He conceived, that their authority was acknowledged at home and abroad, and the Judges, the interpreters of the law, acted by their authority; and he hoped this was sufficient to bear him out; that what he had done was as a soldier, he derived his power from his General, who had his from the fountain, namely, from the Lords and Commons: If he was upon the guard at the King's trial, it was by the command of his General, not voluntary: He was not a contriver, Counsellor, Par-

liament-man, or any of the Judges that sentenced the King; not had any hand in his execution: and if it was such an offence to have a command in the army, General Monk, and the other Generals were as criminal as he; and all the people, who acted by the same authority in the three nations; that if he was guilty of treason, the Commons in Parliament began the treason; and if the representative body were traitors, then were the people whom they represented so too, and there would not be found a jury to try the cause. And though it had been objected to him, that they had destroyed both Lords and Commons, before the fact was committed: The commission, which authorized him to obey his General, was given him while the Lords and Commons sat in Parliament; and he did but his duty in being with his regiment in the hall: If the General had commanded him to take the post, he must have died if he had refused; and it was hard he should be in the same danger when he obeyed.

He still insisted, that he had not advised, or compassed the King's death; that he neither sentenced him, nor signed the warrant for his execution; nor was he concerned in the violence put upon the House of Commons: they were his superiors that put that force upon the house; he was then an inferior officer: And as to what had been sworn, concerning silencing the lady, who made the disturbance, he said, if the lady talked impertinently, and he desired her to hold her tongue, he hoped this was not treason; especially as he was commanded on pain of death to keep the peace.

As to the witnesses deposing he laughed and scoffed, while others sighed: He believed he had as deep a sense of what was transacted that day, as others; but if he had smiled, he hoped that was not treason; and he hoped it would appear he beat his soldiers for crying justice, justice, and not

not to make them cry justice: However, if he did encourage them to demand justice, and execution, the execution of justice was a glorious thing; justice was one of the great attributes of God, and the desiring of it could be no crime. The sending for the executioner, he absolutely denied, and averred he was never at any consultation about the King's death. This he said was managed by Ireton, Harrison, and Cromwell, among themselves: nor could he ever tell any one that Hewlet executed the King, being perfectly ignorant what persons were concerned in the execution.

He observed further, That the words "justice and execution," being spoken without application to any person or thing, were of an uncertain signification, and might bear a good, as well as a bad construction; and in favour of life, the best sense ought to be put upon them. And lastly, he insisted that his Majesty had promised to pardon all that were not excepted by Parliament, which must be intended, he conceived, of a "legal" Parliament, called by the King's writ, which this was not, and consequently could not except him out of the pardon promised by the King.

The King's Council, in their reply to the prisoner's defence, said, they did not charge him with what he had done, by virtue of his commission, but with those violent acts of encouraging the soldiers to cry for "justice and execution;" and those other acts, which manifested his malice against the King: That he was not indicted for levying war, but for compassing the King's death; and the overt-acts, above-mentioned, were given in evidence to prove it: nor could there be any excuse for committing treason; his commission could not warrant his doing a treasonable act. He was obliged to take notice whether the authority, by which he acted, was good or not; neither did his commission empower him to put the King

to death; but he was obliged, by the tenor of it, to preserve him: That those very Lords and Commons, under whom he would shelter himself, made protestations and declarations, and had imposed and taken oaths, for the preservation of the King's person, which he could not but take notice of: he must remember also, that the army came with their swords in their hands to the House, and turned out whom they pleased, excluding far the greatest part of the members, and laid the Lords aside: after which, forty-six of the Commons took upon them to sit, and only twenty-six voted that ordinance, which he pretended to act in obedience to: and lastly, that it was impossible to mistake what he meant by crying for "Justice and execution." Whereupon the jury, after a very short recess, brought the prisoner in "Guilty."

Then Colonel Francis Hacker was brought upon his trial, and making no challenges to the jurors, the first twelve in the pannel were sworn, after which the King's council opened the indictment and produced their witnesses.

Colonel Tomlinson, deposed, That Colonel Hacker, the prisoner, was one of the halberdiers that guarded the King at Cotton-House, and from thence to his trial, before the pretended High-court of Justice in Westminster-Hall: That the day appointed for the King to die, the halberdiers brought his Majesty through the Park from St. James's to Whitehall; that Colonel Hacker, by virtue of the warrant for the King's execution, led him out of Whitehall to the scaffold, erected before the Banqueting-house.

Mr. Secretary Morrice, and the Lord Annesley deposed, That the prisoner Hacker acknowledged before them, that he signed the warrant to the executioner, to behead the King; but said, he did not remember the name of the man: Another witness deposed, that Colonel Hacker seem-

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ed to have the principal command on the scaffold, when the King was beheaded.

The prisoner said in his defence, That he was a soldier under command, and what he had done was, by virtue of a warrant from the High-courte of Justice: that he did not deliver the warrant, or order to the executioner, or knew who he was; and was neither counsellor, abettor, or adviser of the fact.

But the chief Baron, in his directions to the jury, told them, If the prisoner who brought the King to the scaffold, and who had the care and management of the business, and signed the warrant to the executioner, was not guilty of compassing the King's death, no man could be said to be guilty; and the jury being withdrawn a little while, brought in their verdict, that the prisoner was GUILTY.

Then William Hulet, or Hewlet, was set to the bar; and the jury being sworn, the King's council took notice on opening the evidence, that this was the man in the frock and vizard, that cut off the King's head: to prove which, Richard Gittens was sworn, who deposed, that he and Hulet, were serjeants in the same regiment twelve or thirteen years: that a day or two before the King was murdered, Colonel Hewson commanded eight and thirty serjeants (of which number were the deponent and the prisoner) to take an oath of secrecy; which when they had done, he demanded if any of them would undertake to execute the King, promising a reward of an hundred pounds, and preferment in the army, to him that should do it; and every man refused; however, they understood afterwards, that Hulet accepted the office: That the day the King was murdered, the deponent was one of the guards drawn up in the Banqueting-house: that he got upon the scaffold, when his Majesty was brought thither, and heard his Majesty say to one of the executioners, "Is

"the block fast?" and Hulet (as the deponent believed) was the man who fell upon his knees, and asked the King forgiveness: The deponent thought it was Hulet by his speech, and the proportion of his body; and was confirmed him in that opinion was, that Hulet was not seen in the regiment that day: but that the executioner, whoever he was, had a pair of freeze trunk breeches and a vizard on, with a grey beard, and Colonel Hewson used afterwards to call "Hulet, Father Grey Beard," as did most of the soldiers of the army.

Stammers deposed, that Hulet was Captain-lieutenant of Colonel Hewson's own troop, and that he (the deponent) entering himself in the same troop at Dublin, about nine or ten years since. Hulet some little time after, sent for him to his chamber, and among other conversation told him, that he cut off the King's head, and had an hundred pounds for it: but Hulet desiring him to name the man, he sent for him, Stammers said he could not remember the man.

Captain Toogood deposed, that in the year 1650, being in Dublin castle with Colonel Hewson, Hulet the prisoner came in, and the deponent observing an extraordinary familiarity between them, upon Hulet's going away, asked Hewson, who he was, and the Colonel answered, he had made him his lieutenant, from a serjeant: he was a mettled fellow; it was he that did the King's business on the scaffold: the deponent added, that Colonel Pretty also told him, that Hewson assured him, Hulet either cut off the King's head, or held it up, and said, "Behold the head of a traitor!" And that the deponent talking with Hulet himself at Carlow in Ireland, concerning the execution, Hulet said, "What I did, I will not be ashamed of; if it were to do again, I would do it:" That discoursing with Hulet at another time, concerning the King's death, he said it was true,

True, he was one of the persons *displayed* upon the scaffold: and if the King had refused to submit to the block, there were staples fixed in the scaffold, and he had that about him, that would have compelled him to submit: And at another time Hulet said, he should not deny the business of the King's death, call him to an account when they would.

Davis deposed, that drinking at a tavern in Dublin with captain Hulet, and asking him, if he took up the King's head, and said, "Behold the head of a traitor," Hulet answered, it was a question he never resolved any man, though often demanded: however, it was no matter who said it, "I say it now, it was the head of a traitor."

Lieutenant Colonel Neffon, deposed, that discoursing with Colonel Axtel, concerning the person that beheaded the King, Axtel said, they would not employ men of mean spirits, they did not know; but pitched upon Hulet and Walker, two stout fellows, their serjeants; that Walker gave the blow, and Hulet held up the head; and they had thirty pound a-piece, or thirty pound between them.

Benjamin Francis deposed, that the vizards were clothed alike in woollen frocks, close to their bodies, like butchers; one of them had a black beard, and the other a grey beard and peruke; and that Greybeard, who cut off the King's head, was about the size of Hulet the prisoner; and Borden deposed, that Hulet was not seen among the soldiers, either the day the King was murdered, or the day after.

The prisoner in his defence said, He never discoursed with any one of the King's death, but Stammets; who charging him with being one of the vizards, he answered, you do me wrong; and Stammets saying it was a just act, he the prisoner replied, whether it was so or not, he had nothing to do to justify it.

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He said farther, that he could prove by a very good token, that he was in another place when the King died; for he and seven or eight serjeants more were made prisoners that day, because they refused to be upon the scaffold, and that he would prove by forty witnesses, that it was another man that did the fact, if they would give him time.

Then several witnesses were called on behalf of the prisoner, and particularly one of the Sheriff's officers, who deposed, That drinking with the common hangman, a little after the King died, and asking him if he did the fact, the hangman answered, God forgive me, I did it; and I had forty half crowns for my pains.

Smith, a waterman, deposed, that as soon as the blow was given, a file of musketeers brought the hangman to the deponent's boat, and the soldiers said, Waterman away with him quickly; that when he and his mate had got the hangman some distance from the shore, they asked him, if it was he that cut off the King's head, he said, No, as I am a sinner to God, and trembled every joint of him. He said he was fetched to Whitehall indeed by a troop of horse, and kept close prisoner there; and they had his instruments, but he did not do it: That the deponent thereupon said, he would sink his boat, if he did not tell him true; but the hangman persisted to deny it with several protestations.

Cox deposed, That when the Lord Capel was beheaded, he asked the hangman if he did not cut off his Master's head, and the hangman told him yes, and told him, that was the axe: Whereupon the Lord Capel took the axe and killed it; and giving him five guineas said, Sirrah, wert thou not afraid? and the hangman answered, they made him cut it off, and he had thirty pounds for his pains.

Other witnesses deposed, they heard the common hangman acknowledge, he cut off

the King's head. Then the prisoner desired he might have a fortnight's time to produce the rest of his witnesses; but was told, that could not be granted. And the jury withdrawing and debating the matter a considerable time among themselves, brought in the prisoner guilty, and then the court adjourned.

The court sitting again at the Old-Bailly the 16th of October, Edmund Harvey, Isaac Pennington, Henry Marten, Gilbert Millington, Robert Tichburne, Owen Roe, Robert Lilburn, Henry Smith, John Downes, Vincent Potter, Augustine Garland, Simon Meyne, James Temple, Peter Temple, and Thomas Wayre, were brought up the bar, and the jury charged with them all. Mr. Harvey, instead of making a defence, confessed that he did sit in the pretended High Court of Justice; but said, he did not sign the warrant for beheading his Majesty. He produced two witnesses also, who deposed, he endeavoured to prevent the sentence; and that he was under a great concern when it passed; and tendering a petition to the court, that they would intercede in the behalf of himself, his wife, and thirteen children, the court promised to present the petition to his Majesty.

Isaac Pennington, the seditious alderman, also confessed, that he sat in the pretended High Court of Justice; and endeavoured to excuse himself, by alleging, he was drawn in by others, and had no malice against his Majesty; and made a merit of it, that he absolutely refused to sign the warrant for beheading of him, though he was much importuned to do it.

Henry Marten confessed the fact; but said, he did not do it maliciously, murderously, and traitorously, as was laid in the indictment. To which Mr. Solicitor replied, that Marten thought he might sentence the King to death, and sign a warrant for his execution, meekly, innocently, charitably and honestly; and because he en-

deavoured to wipe off the malice, they should prove that he did it meekly, and was in great sport at the time of signing the warrant for the King's execution.

Ewer deposed, That being in the Painted-chamber, the 20th of January, 1648, when the warrant for the King's execution was signed, he saw Cromwell mark Marten's face with a pen, and Marten marked Cromwell's face.

Sir Parbeck Temple deposed, That at a consult of the Regicides, in the Painted-chamber, just before the King's trial, Cromwell said, the first question the King would ask, would be, By what authority they tried him; and demanded, what answer they should give to it? and that, after some pause, Marten the prisoner said, "In the name of the Commons in Parliament assembled, and all the good people of England," which was the answer afterwards made to his Majesty, in their mock-court in Westminster-hall.

Marten, in his defence, said, that according to the little law he had, no fact would be a crime in itself, but as it was circumstantiated; and that his being in sport when the warrant was signed, did not imply malice. That the commission they acted by, was in the name of the Commons assembled in Parliament, the then supreme authority. And he that gave obedience to the supreme power *de facto*, whether it was *de jure*, or not, might be deemed of a peaceable disposition, and was far from being a traitor. That the statute of Henry VII. indemnified those that were in arms for a King *de facto*. And if the supreme officer *de facto* might justify a war, he presumed the supreme authority of England might justify the erecting such a judicature, though it was but an authority *de facto*. And as to the objection, that it was but a third estate, and a small part of that, yet it was all that was extant; and he heard lawyers say, where Commons were appurtenant

that to a torment, and the tormentors turn down, so that only a small stick remained, the Commoner belonged to that one stick, as if the whole torment was standing; that the King was now then such a King, whose peace, crown, and dignity, were concerned in public matters; he was not then in the execution of his office, but a prisoner; he the prisoner, had then, as now, a peaceable disposition, and resolution to submit to the government that God had set over him. He thought his present Majesty's title the best under heaven; for he was called in by the representative body of the nation; and whether his life were long or short, he should always pay obedience to him. He confessed he did adhere heartily to the Parliament's army; and his life was at the King's mercy, and if the King pleased to give him his life, he should lie under a double obligation to his Majesty; and concluded with observing to the jury, that it was as much the interest of the crown, that the innocent should be acquitted, as the guilty condemned.

Then Mr Solicitor having summed up the evidence, said, Gentlemen of the jury, what does the prisoner say, in his defence, more than this? The fact I have committed is fact; that I durst not call it innocent; but would have you believe it such? Was it your intention, gentlemen, that the King should be tried as the prisoner moved? It will be long, you therefore, to declare, that the people of England do abhor these facts; and repenting, all that the prisoner has said is, that there was an authority of his own making, whereby he becomes innocent; but we hope out of his own mouth, you will find him guilty.

Gilbert Millington confessed himself guilty; but said in his excuse, that he was over-awed by the then powers, and preferred a petition for mercy, which was accepted of by the then powers.

Robert Tichburn also acknowledged

his offence, but said he had no more malice against his Majesty than against the wife of his bosom; that he was ignorant of the law, fact, and begged for mercy; that Owen Roe, confessed his sitting in the mock-court of Justice, and signing the warrant for the execution; but said he was an ignorant tradesman, led away by others; and threw himself at the King's mercy.

Robert Lilburne acknowledged his guilt, but urged ignorance in the laws as his excuse.

Henry Smith confessed the crime, and said he was over-awed by the powers then in being; and begged the court would be mediators for him to his Majesty.

Then the Lord Chief Baron summed up the evidence, as to Harvey, Pennington, Marten, Millington, Tichburn, Roe, Lilburne, and Smith; and the jury found them all guilty.

After which John Downes was brought to the bar, who acknowledged his sitting in the pretended High Court of Justice, but said he was thrust into the number of the King's judges, and was never at any consultation about the matter; that it was he that moved so passionately, the King might be heard before the Parliament, and caused the court to be adjourned, whereupon Cromwell stormed, and said, John Downes did not show what they had to do with the most hard-hearted man upon earth. That it was not fit the court should be interrupted by such peevish fellows; that the bottom of it was, he would save his old master, and threatened him severely.

Upon which the Lord Chief Baron observed, that notwithstanding these convictions, the prisoner proceeded to sign the warrant for beheading the King.

Vincent Potter confessed his sitting in the pretended court, and signing the warrant; but said he was not concerned in the contrivance, and threw himself upon the King's mercy.

Angustine

Augustine Garland confessed his sitting in the court, and signing the warrant for the execution.

The King's counsel answered, they would not accept his confession, for they would prove that he was one of the men that spit in the King's face; whereupon Glend was sworn, and deposed, that on the day of the sentence, when they were hurrying the King away, Garland came by, and spit in his Majesty's face; and the witness being asked, if he did it on purpose, answered, "I suppose he did it somewhat suspiciously in that way!" Garland replied, He did not know he was doing the King; (which seems to admit he did it, whether accidentally, or not); and if he was guilty of that inhumanity, desired no favour of God Almighty. He confessed, however, that he was in the chair, when the act passed for trying the King; but said, he was forced into it; and what he had done was out of fear of the powers then in being; that he never had any malice against his Majesty, or shewed any disrespect to him or his friends.

Simon Meyne also confessed his sitting in the court, and signing the warrant for the King's execution; but said he was under a force, and threatened in case he refused.

James Temple made the same confession, and tendered a petition for mercy.

Peter Temple made the like confession, but pretended he had no malice in his heart against the King.

Thomas Wayte confessed his sitting in the court, and signing the warrant for beheading his late Majesty; but said he was drawn in and trepanned; and offered a petition to his Majesty and both Houses of Parliament for mercy, which was accepted.

William Haveringham confessed his sitting in the pretended court; but said he was under a force; and that he did, however, refuse to sign the warrant for summoning the court, and for the King's execution;

and begged the estate, interest for him to the King and Parliament for mercy.

Then the jury withdrew, and in a little time returned with their verdict, that John Downes, Vincent Rotten, Augustine Garland, Simon Meyne, James Temple, Peter Temple, Thomas Wayte, and William Haveringham, were all guilty to no purpose. After which Sir Harcourt Walter, Elphinstone, Blacker, Austin, Hales, Pennington, Mattan, Millington, Theobald, Ror, Lill, born, Smith, and Hawkey, being asked for judgment, the Lord Chief Baron acquiesced in them, that although he was not of the sentence of death upon all, yet as to all but three of them execution was to be suspended, till another act of Parliament should pass for that purpose; and as to Mr. Haveringham one of the three, he thought no order would suddenly be given for his execution; but as to Austin and Hacker, he said there was no room for them to hope for mercy.

The Lord Chief Baron's Speech before the Sentence pronounced against the afore-named Prisoners found Guilty.

YOU that are prisoners at the bar, you stand here in several capacities; yet all of you persons convicted of the detestable and execrable murder of our Sovereign Lord King Charles the First, of blessed memory. Mistake me not, I do not say that you are all of you guilty of executing the fact, but in law, and in conscience, *pro facto*, (though not *pro re*), you are guilty of it. In that you prepared the way and means to it, in that you brought his head to the block, though you did not cut it off. You are here in three sorts, and I must apply my words accordingly; and truly I do it with as much sorrow of heart as you have, many of you being persons of liberal education, great parts; I say you are of three sorts. There are some of you, that though the judgment of death is to pass against you, by

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S f . **and**

and all the people, humbly submit themselves until the last drop of their blood be spent in defence of the King and his royal posterity; and therefore they did oblige themselves and all the people of England, as far as they could represent them (the words are more full than I can express them) and indeed it is so dark I cannot read them; they did acknowledge to be bound to him and his imperial crown. Remember these were not words of complement; you shall find that they all of them; and so did so many of you as are members of Parliament, yea, all of you, before you came into the House of Commons, did take the oath of allegiance, which was made after this recognition, the third and fourth of King James, or otherwise were not to be members. What was that oath of allegiance that you took? It was, that you should defend the King, his person, (that is in the 3d of *Jacobi*, chapter the fourth) his crown and dignity: What was it? Not only against the Pope's power to depose, but the words are, or otherwise; look into the act, and reflect upon your own conscience, and you shall find that all did swear to defend the King, his crown and dignity, and there it is called imperial crown. I would have you lay this to heart, and see how far you have kept this oath: Gentlemen, in the oath of supremacy, which you all took therein, you did further acknowledge that the King was the only supreme governor of this realm: Mark the words, I will repeat them that you may lay it to heart; you that have more time to apply it to your fact; and you that have less time, for ought I know, you have reason to consider what I have to say; you swear then, that the King, by the oath of supremacy, which all of you have taken, or ought to have taken; if any of you have not taken it, yet notwithstanding you are not absolved from the obligation of it; but most of you did take it; there you did

swear that the King is the only supreme governor of this realm; and you swear there that you will defend all jurisdictions, privileges, preeminences, and authorities, granted or belonging to the King's highness, his heirs, and successors, or united and annexed unto the imperial crown of this realm. For the first, if the King be supreme then there is no co-ordination. *Non habet majorem, non habet parem*; that word (imperial crown) is at least in nine or ten several statutes; it is the very word in this act that was made lately in pursuance of former acts concerning judicial proceedings. And so in the time of King Charles, they acknowledged him to be their liege sovereign; I say that word *Supream*, and so the word "Imperial Crown," is in the first of Queen Elizabeth, the third and eighth of Elizabeth, the twenty-fourth of Henry VIII. cap. 12. there it is said this kingdom is an "Imperial crown, subject to none but God Almighty." Before these times you shall find in the 16th of Richard II. the Statute of *Præmanire*, the crown of England subject to God alone. I will go higher, William Rufus, (some of you are historians, and you shall find the same in Eadmerus, and also in Matthew Paris, shortly after William Rufus his time) when he wrote to the Pope he challenged, and had the same liberty in this kingdom of England; as the Emperor had in his empire; (mistake me not, I speak only as to the person of the King) I do not meddle of rights between the King and subjects, or subject and subject; you see in this case concerning the death of his Majesty's dear father, and our blessed Sovereign, of happy memory, he doth not judge himself, but according to law; that which I assert is as to the person of the King, which was the privilege of Emperors, as to their personal privileges, if he had offended, and committed an offence, he was only accountable to God himself. I will come back to what I have said; you swore

swore to be faithful to the King as supreme. The King of Poland hath a crown, but at his oath of coronation it is conditioned with the people; that if he shall not govern according to such and such rules, they shall be freed from their homage and allegiance. But it differs with our King, for he was a King before oath. The King takes his oath, but not upon any condition; this I shew you, to let you see that we have no coercive power against the King. The King of England was anointed with oil at his coronation, which was to shew that absolute power, (I do not say of government) but of being accountable to God for what he did: the law saith, The King doth no injury to any man; not but that the King may have the imbecilities and infirmities of other men, but the King in his single person can do no wrong: But if the King command a man to beat me, or to disseize me of my land, I have my remedy against the man, though not against the King. The law in all cases preserves the person of the King to be untouched; but what is done by his ministers unlawfully, there is a remedy against his ministers for it; but in this case, when you come to the person of the King; what do our law-books say he is? They call it, *Caput reipublice, salus populi*, the Lieutenant of God, and let me tell you, there was never such a blow given to the church of England, and the Protestant religion. There was a case, and that of the Spencers, you shall find in the 7th Report of the Lord Cook, in Calvin's Case, that homage is due to the King in his politic capacity; and then they made this damnable inference, that therefore if the King did not demean himself as he ought, that he should be reformed, *pura aspertee*, by asperity, sharpness, or imprisonment: but these were condemned by two acts of Parliament in print, that they could not do that even in that case; one was called the banishment of Hugh Spen-

cer; and the other is in 1 Edward III. upon the Roll. My masters, in the first of Henry the Seventh, you shall find it in the printed Seven Books, he saith, "That as to the regality of his crown, he is immediately subject unto God." Mark the doctrine of the church of England, Gentlemen; I do not know with what spirit of equivocation any man can take that oath of supremacy: You shall find in the Articles of the church of England, the last but one or two; it is that article which sets forth the doctrine of the church of England; they say, that the Queen, and so the King, hath the supreme power in this realm, and hath the chief government over all the estates of the realm; the very words are so; this was shortly after making the act; the articles were in 1652; and she came in 1558, or 1559; it is to shew you the King hath the chief government over all the estates within the nation; and if you look upon it, you shall find it was not only the judgment of the Church, but of the Parliament at the same time. They did confirm this article so far, that they appointed that no man should take, or be capable of a living, but those that had taken that oath. God forgive those ministers that went against it. The Queen, and the Church, were willing that these should be put into Latin, that all the world might see the confession of the church of England, and of the people of England; you may read it in Cambden: I have told you how, and wherein, the chief power consisted; not in respect the King could do what he would; no, the Emperors themselves did not challenge that, but this they challenge by it, that they were not accountable to man for what they did: No man ought to touch the person of the King; I press it to you in point of conscience; you see in the scripture, in Psalm 51. the Psalm of Mercy, whereby we ask pardon of God for our great offences; I think none of you.

you in this condition but will join in this; you know the adultery and murder that David committed, this penitential psalm was made for that; what doth he say? "Against thee, thee only have I sinned, &c." *tibi soli peccavi domine*; not because he had not sinned against man, for 'tis plain he had sinned both against Bathsheba and Uriah too; but because he was not liable to the tribunal of man, he was not bound or accountable to any man upon earth. And now, my masters, I beseech you consider, that some of you for ought I know suddenly, and some of you, for ought I know, not long after, all of us, we do not know how soon, must come to make a right account to God of what we have done. After this life you enter into an eternity, an eternity, an eternity of happiness, or woe; God Almighty is merciful to those that are truly penitent; the thief upon the cross, and to all that are of a penitent heart. You are persons of education, do not you go on in an obstinate perverse course, for shame of men, even this shame which you now have, and which you may have when you come to die; a sanctified use may be made of it; you pay to God some part of that punishment which you owe to him for your sins. I have no more to say, but the next thing I have to do, is to give the sentence, the judgment, which truly I do with as unwilling a heart as you do receive it. You prisoners at the bar, the judgment of the court is this, and the court doth award, That you be led back to the place from whence you came, and from thence to be drawn upon an hurdle to the place of execution, and there you shall be hanged by the neck, and being alive shall be cut down, and your privy members to be cut off, your entrails to be taken out of your bodies, and (you living) the same to be burnt before your eyes, and your heads to be cut off, your bodies to be divided into four quarters, and heads and

quarters to be disposed of at the pleasure of the King's Majesty; and the Lord have mercy upon your souls.

Court adjourned till Friday morning seven a clock, when sentence was pronounced against Sir William Heveningham.

Of all the Regicides, there were but ten executed about this time, viz. Harrison; Carew, Cook, Peters, Scot, Clement, Scroop, Jones, Hacker, and Axtel; as to Hulet, who was charged with cutting off the King's head, the evidence was held deficient.

Harrison was executed at Charing Cross on the 13th of October; Carew on the 15th of the same month; Cook and Peters on the 16th; Scot, Gregory, Clement, Scroop, and Jones on the 17th, all at Charing-Cross; but Axtel and Hacker were executed at Tyburn the 19th instant.

Most of them died impenitent, and gloried in the murder of their Sovereign. Harrison cried out as he was going to execution, "That he went to suffer in the most glorious cause that ever was in the world; and that there was more of God in it than men were aware of." Carew declared, "That what he had done was of the Lord; and if it were to be done again, he would do it." Cook, while he stood upon the ladder, said, "The most glorious fight that ever was seen in the world was, Jesus Christ upon the cross; and the most glorious, next to that, was, to see a poor creature suffer in his cause; and that he believed an army of martyrs would willingly come from heaven to suffer in such a cause as he suffered for." Hacker said, "If he had a thousand lives, he would lay them all down for the cause." And Axtel "thanked the Lord, no guilt lay upon his conscience." But some of them, it is said, had raised themselves to this pitch by strong-waters; and Hugh Peters was very drunk, when he was drawn to his execution; which occasioned Cook, who

who suffered with him, to say, "Here is a poor brother, that I am afraid is not fit to die at this time." Only Scroop and Jones discovered any remorse, or behaved with tolerable decency; but Scroop, it seems, prayed for the King; and the other acknowledged the justice of their sentence.

The bodies of some of the principal regicides also, that died before the restoration, viz. of Cromwell, Bradshaw, Ireton, and Pride, were taken out of their graves, and dragged on hurdles to Tyburn, where they were hanged up, from ten in the morning till sun-set, and then buried under the gallows.

An act also passed, to attain nineteen of the regicides that fled from justice; and to confiscate the estates of those that died before the restoration.

The estates also of the Lord Mounson, Sir Henry Mildmay, and Mr. Wallop, who had been pardoned, as to life; with the estates of Sir James Harrington and John Phelps, not then apprehended, were also confiscated; and the Lord Mounson, Sir James Harrington, and Sir Henry Mildmay, were degraded from their honours and titles, and drawn upon sledges, with ropes about their necks, from the Tower of London, to the gallows at Tyburn, and from thence to the Tower again, on the 27th of January, 1661. And it was enacted, they should remain prisoners for life; but they had such powerful mediators at court, that they were not long after released out of prison, and great part of their estates restored them: and such was the gratitude and ingenuity of Mildmay, for all this grace, that he became one of the most implacable enemies King Charles II. had, which his Majesty took notice of,

when he came to present him with a seditious address afterwards.

But before the last mentioned act, for inflicting pains and penalties on these and the rest of the regicides, was made, those who had been condemned and reprieved, being brought to the bar, and ordered to shew cause why judgment should not be executed upon them; they answered, that they had surrendered themselves, upon his Majesty's gracious declaration from Breda, and the proclamation afterwards published, by the advice of both Houses of Parliament, to render themselves; being advised that they would thereby save lives; and humbly craved the mercy of the two houses, and their mediation to his Majesty: to which, it is said, that infamous droll Harry Marten added, "That he had never obeyed any proclamation before; and he hoped he should not be hanged for taking the King's word now."

And they were so fortunate, that the bill, that was brought in for their execution, was dropped at the second reading, whereby their lives were saved.

Three of the regicides who had fled from justice (viz.) Miles Corbet, Colonel John Okey, and Colonel John Berkstead, were afterwards apprehended in Holland, at the instance of Sir George Downing, (his Majesty's Resident to the States in the year 1662) and sent over to England; and having been outlawed for high-treason, a rule was made by the court of King's-Bench, for their execution at Tyburn.

These were the last of the regicides that were punished capitally; and it was observed they died very penitent, exhorting the people to submit to his Majesty's government.

The Proceedings between Lady FRANCES HOWARD and ROBERT Earl of Essex, before the King's Delegates, George Archbishop of Canterbury, John Bishop of London, Lancelot Bishop of Ely, Richard Bishop of Litchfield and Coventry, Dr. Caesar, Thomas Parrey, Dr. Donne, John Bennet, Francis James, and Thomas Edwards, authorized under the King's Broad-Seal.

The Allegations.

I. **T**HAT she, at the time of the marriage, was thirteen years old, and is at this time twenty two or twenty three.

II. That she and Robert Earl of Essex were married by public rites and ceremonies of the church, in January, 1603.

III. That the aforesaid Robert, at the time of the pretended marriage, was about fourteen, and is about twenty-two or twenty three at this time; and ever since, and at this present, is a man (as far forth as a man may judge) and hath been in good health, and perfect estate of body, not any way hindered by any ague or sickness, but that he might have carnal copulation with a woman.

IV. That since the pretended marriage, at least by the space of whole and continue three years after the said Robert had fully attained the age of eighteen years, as time and place did serve, after the fashion of other married folks, the said Frances Howard in hope of lawful issue, and desirous to be made a mother, lived together with the said Robert, at bed and board, and lay both naked and alone in the same bed, as married folks use: And desirous to be made a mother, from time to time, again and again, yielded herself to his power, and as much as lay in her, offered herself and her body to be known; and earnestly desired conjunction and copulation.

V. And also the said Earl, in the same time, very often, again and again, did try to have copulation, as with his lawful wife, which she refused not, but used the best means she could: notwithstanding all this, the said Earl could never carnally know her, nor have that copulation in any sort which the married bed alloweth.

VI. Yet before the said pretended marriage, and since, the said Earl hath had, and hath power and ability of body to deal with other women, and to know them carnally, and sometimes hath felt the motion and pricks of the flesh carnally, and tending to carnal copulation, as he saith and believeth; and peradventure, by a perpetual and natural impediment hath been hindred all the former time, and is at this present, that he can have no copulation with the said Lady Frances.

VII. Furthermore, the said Lady Frances hath been, and is fit and able to have copulation with a man, and such a one as may be carnally known; neither hath in this regard, any impediment.

VIII. Moreover, the said Lady Frances remaineth, and is at this present, a virgin. Also at the time of the pretended marriage, the said Lady Frances was unacquainted with the Earl's want of ability and impediment, formerly mentioned.

IX. And furthermore the said Earl, long before this suit commenced, hath very often, and at sundry times confessed in good earnest, before witnesses of good credit,

dit, and his friends and kinsfolks, that although he did his best endeavour, yet he never could, nor at this time can, have copulation with the said Lady Frances, no not once.

X. And lastly, in regard of womanish modesty, the Lady Frances had concealed all the former matters, and had a purpose ever to conceal them; if she had not been forced through false rumours of disobedience to the said Earl to reveal them.

She requireth, since this pretended matrimony is but a fact, and not in right, it may be pronounced, declared, and adjudged as none, and of none effect; and she may be quit and free from all knots and bonds of the same, by your sentence and authority.

The Earl of Essex replieth, July 5, 1614.

To the first and second he answereth affirmatively.

To the third, he thinketh that at the time of his marriage, he was full fourteen years, and is now twenty-two and upwards, neither since hath had, or hath any sickness or impediment to hinder him, but that he might have had copulation with a woman, saving in the time of his sickness of the small-pox, for two or three years after his marriage, which continued for a month or six weeks, and at another time, when he had a few fits of an ague.

To the fourth, he affirmeth, that for one year he divers times attempted; that the two other years, when he was willing, she shewed herself sometimes willing, but other times refused, and he lay in bed most commonly with her, but felt no motions or provocations, and therefore attempted the first year.

To the fifth, he answereth, that he never carnally knew her, but found not any defect in himself, yet was not able to penetrate in her womb, nor enjoy her.

To the sixth, he believeth, that before and after the marriage, he hath found an ability of body to know any other woman, and hath oftentimes felt motions and provocations of the flesh, tending to carnal copulation; but for perpetual and natural impediments, he knoweth not what the words mean; but that he hath lain by the Lady Frances two or three years last past, and had no motion to know her, and he believes never shall.

To the seventh, he believeth not that the said Lady Frances is a woman able and fit for carnal copulation, because he hath not found it.

To the eighth and ninth, he believeth them both to be true, and thinketh that once before some witnesses of credit, he did speak to this purpose, "That he oftentimes had endeavoured carnally to know her, but that he did not, nor could not."

Doubts conceived out of the Fact and Process in the Suit between the Lady Frances Howard, and the Earl of Essex.

1. Whether the libel be defective, especially in the fourth article, where it is said, that *Dominus Comes Essex pluribus & iteratis vicibus* (which may be verified and satisfied in two or three times) *dictam dominam Francisam ejus uxorem prætensam cognoscere tentavit, &c.*

2. Whether the answer of my Lord of Essex to the said fourth article in that behalf, being but thus, That he did divers times attempt, &c. be full, certain and sufficient:

3. Whether in this case my Lord of Essex his oath (*cum 7 manu propinquorum*) be not by law requisite, as well as my Lady's.

4. Whether my Lord of Essex would be inspected by physicians, to certify (so far as they can by art) the true cause and nature of the impediment.

5. Whether

5. Whether by triennial cohabitation, there having been no carnal copulation between them (*Impedimentum maleficii* being accidental) *presumatur præcessisse vel potius subsequutum fuisse matrimonium contractum & solemnizatum.*

6. Whether they ought *post præceptum Judicis* (notwithstanding their triennial cohabitation before the suit begun) to cohabit together, *saltem per aliquod temporis spatium arbitrio judicis moderandum*, for further trial, &c.

His Grace's Arguments.

The Lord Archbishop's Speech to his Majesty.

Inasmuch as we firmly believe, that the Scripture doth directly, or by consequence, contain in it sufficient matter to decide all controversies, especially in things appertaining to the church, as that marriage among Christians can be no less accounted than a sacred thing, as being instituted by God himself in paradise, honoured by the presence of our Saviour himself, declared by St. Paul to be a sign of the spiritual conjunctions between Christ and the church.

I would be glad to know, and by what text of Scripture, either by the Old or New Testament, a man may have a warrant to make a nullity of a marriage solemnly celebrated, *Propter maleficium versus banc.*

Which I do the rather ask, because I find warrant expressly in the Scriptures to make a nullity of a marriage *propter frigiditatem*, by the words of our Saviour, Mat. 19, ver. 12. "For there be some chaste, or eunuchs, which are so born of their mothers belly, and there be some which are made chaste of men, and there be some which have made themselves chaste for the Kingdom of heaven."

I would also know gladly what antient father amongst the Greeks or Latins by oc-

casión of interpretation of Scripture, or any disputation, hath mentioned *maleficium versus banc.*

The like I demand touching ancient councils, either general or provincial, and concerning stories ecclesiastical, whether any such matter be to be found in them.

If for ought that appeareth never mention was made of this, till *Hircanus Rhe-misis Episcopus*, who lived four hundred years after Christ; it may well be conceived that this was a concomitant of darkness or Popish superstition, which about that time grew to so great an height, (God permitting them) that punishment might fall upon the children of unbelief.

But since the light of the gospel is now in so great a measure broken forth again, why should not I hope that those, who have embraced the gospel, should be free from this *maleficium*; especially since amongst a million of men in our age, there is but one found in all our country, who is clearly and evidently known to be troubled with the same? and if there should be any which should seem to be molested, we are taught to use two remedies, the one temporal physic, the other eternal.

For the first, our Saviour said, *hoc genus demoniorum non ejicitur, nisi per orationem & jejunium*: and St. Peter speaking of the Devil, *Cui resistite firme in fide*; and the canonists themselves prescribe alms, fasting and prayer to be used in this case; but that they join supplication and their exorcisms thereunto, and for corporeal medicine to be applied therewith as against a disease; so is the judgment of our late divines, whether they speak of *maleficium* or not.

Now admit the Earl of Essex might be imagined to be troubled with *maleficium versus banc*; I demand what alms hath been given, what fasting hath been used, and what prayers have been poured forth to appease the wrath of God towards him or his wife; or what physic hath been taken or

or medicine hath been applied for three years together? Not one of these things: but the first hearing must be to pronounce a nullity in the marriage, of which declaration we know the beginning, but no mortal man's wit can foresee the end, either in his person, or in the example.

Then the Archbishop for confirmation of his opinion, shewed the testimony of Melancthon, Pezelius, Hemingius, Polanus, Arcularius, Beza, Zanchius.

Judicium Philippi Melancthonis de divortio ex impotentia.

Personæ quæ non sunt idoneæ ad communionem conjugalem nequaquam sunt conjuges, sed cum explorata, est frigiditas, Juxta pronunciet illas personas liberas esse. Nec fit tunc divortium, quia non erat conjugium, juxta dictum, Mat. 19, sed fit declaratio, ut alii sciant, illam societatem non esse conjugium, & personæ quæ habet naturæ vires integras, concedi aliam feliciorem copulationem legitimam. Sed ad explorandam frigiditatem Jura, tempus constituunt, si res dubia est, ne ante triennium fiat se junctio. Eodem modo pronunciant de iis in quibus natura ita læsa est lascivio aut veneficio, ut opæ medica sanari non possit, si tunc triennio frustra tentata est medicatio.

Tanta autem est virtus aliquarum mulierum, ut occultent imbecillitatem virorum, sicuti viri doctissimi Simonis Grynei fides narravit, se, mortua prima conjuge, duxisse viduam virginem, quæ undecim annos supra fuerit viro frigido, nec unquam ulli ante mortem viri, hanc rem, patefecit. Hæc Melancthon in locis: Loco de conjugio, quæ Christopherus Pezelius suis in Melancthonis examen explicationibus inseruit, & eis adjecit hanc annotationem. Impotentia alia naturalis, alia accidentalis est. Naturalis, cum quis natura non est idoneus ad communionem conjugalem. Acci-

dentalis, cum quis est castratus, aut veneficio corruptus. Rursus quæ ex veneficio accedit impotentia, aut curari potest medicamentis, aut est perpetua. Ex his distinctionibus sumitur explicatio quæstionis, an & quomodo impotentia sit causa divortii? Nam inter impotentes, non potest constare conjugium, quia deest causa sufficiens & finalis. Primum, si persona illa quæ sana est, decepta fuit, & ignorans duxit impotentem, non igitur potuit esse consensus, quæ est causa efficiens matrimonii. Secundo, duplex est finis conjugii, unus est generatio sobolis, sicut dicitur, Crescite & multiplicamini: Alter finis est Vitatio concupiscentie libidinum, juxta dictum; Vitanda fornicationis causa uniusquisque; habeat uxorem. Hæc Pezelius 2. parte explicat, in Examen Melancthon.

In English thus

The opinion of Philip Melancthon concerning divorces from impotency.

“Persons who are incapable of the conjugal rites are not married, but when the impotency is established, the judge should pronounce such persons free. Ndr can this be, properly, called a divorce, because there was no marriage, according to the meaning of Matthew 19. but the declaration is made, that others should know that their cohabitation was no marriage; and that a more lawful connection was permitted to the party who had no natural impediment. But the canons appoint a certain time, to prove the impotency, if there be any doubt, the separation cannot be before three years. In the same manner they pronounce concerning those whose nature is so injured by witchcraft or enchantment, that it cannot be cured by medicine, if medicine should be taken for three years without intermission.

The virtue of some women is so great, that they may not only conceal the weakness of their

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husbands; as the sister of the learned Simon Grynæus asserted, that after the death of his first wife, he married a widow, who was a virgin, and had been married seven years to an impotent man, and never had discovered this circumstance to any one before her husband's death. These are the words of Melancthon in his discourse *de conjugio*, which Pezelius has quoted in his comment on Melancthon, and to which he has added the following note: "Impotence is either natural or accidental; when a person is castrated, or spoiled by witchcraft. Again, the impotence occasioned by witchcraft, may either be cured by medicine, or be perpetual. From these distinctions we may solve the question, whether and how far impotence may be the cause of divorce?" For between impotent persons there can be no marriage, because the sufficient and final cause is wanting. First, whether if the person who is found, were deceived, and ignorantly married an impotent person, then there could be no consent, which is the efficient cause of matrimony. Secondly, the end of marriage is twofold, one the procreation of children, as it is said, "Increase and multiply"; the other end is to avoid promiscuous lust, according to the saying, "to avoid fornication let everyone have a wife." *Probat in Patr. H. in Epistol. Melancthon.*

In eadem Causa Hemmingi Judicium.

Inhabilitas corporum ad usum conjugium non divortii causa est, & non potest in facilius beneficio adeo inhabilitas duntaxat viri, nunquam sanari, possint. Sed plura sunt iudicii perpendenda, antequam divortii sententiam ferat. Primum, an impotentia præcesserit nuptias. Secundum, an sit curabilis. Tertium, an sit curabilis. Quartum, an casus rei mulier conscia fuerit ante nuptias. Si præcesserit Nuptias, potest liberari persona sine divortio petens;

non enim fore verum conjugium, si quidem non legitime consentiunt, cum unde fallit, *non est verum conjugium*. *Impotentia* errat potius. Cum ergo Deus hoc fallaciam nec errorem probat, non est adeo casus hoc conjugium. Secundo, iudex, si intellexerit ex probationibus incurabile esse vitium, mox declarabit suo testimonio, non fuisse matrimonium; verum si spes sit curationis, tunc tamen statuetur, in quo patienter expectetur curatio; quæ si frustra tentata fuerit, iudex pronuntiabit conjugium nullum fuisse.

Si subsecutum est vitium post nuptias & complexum maritalem conjugum, nullo pacto permittendum est divortium; fortasse enim afflicta, si absque culpa, patienter in conjugio stenda est. Si alter fuit confusus infirmitatis akerius ante nuptias, cogantur simul habitare, & alia officia sibi mutuo præstare: Nam persona conscia vitii alterius absque dubio fraudem meditata est, quæ fraus non debet illi prodesse, si postea divortium petat. Hæc Hemmingius libello de conjugio, Repudio & divortio.

In English thus.
The opinion of Hemmingus in the same cause.

The inability of bodies with respect to matrimonial rites is the cause of divorce, and sometimes by witchcraft, and poison some men are rendered so impotent, that they cannot be cured. But many things are to be weighed before a divorce should be pronounced. First, whether the impotency preceded the marriage. Secondly, Whether it succeeded it. Thirdly, Whether it be curable. Fourthly, Whether the woman was conscious of it before marriage. If it preceded the marriage, the found person may be relieved who petitions for a divorce, for the marriage was not real, if both parties did not legally consent; when the one deceives, the other is mistaken, the impotent

potent deceives, the potent is mistaken. As therefore, God approves neither of fallacy or error, he cannot be said to have joined them together. Moreover, if the judge shall understand from proofs, that the defect is incurable, he shall declare upon his own testimony, the nullity of the marriage, but if there should prove any hopes of a cure, the space of three years shall be appointed, during which the cure may be expected with patience; but if the expectation shall prove in vain, the judge shall pronounce the nullity of the marriage.

If the defect follows after marriage and conjugal enjoyment, a divorce should be allowed by no means; the afflictions of fortune are to be born patiently in the marriage state, if there be no defect. If one of the parties should be conscious of the weakness of the other before marriage, they should be compelled to live together, and to afford each other reciprocal benevolence; for a person who is conscious of the defect of the other party, certainly premeditated a fraud, which fraud ought not to be advantageous to her, if afterwards she should sue for a divorce. *Hemlingius, de Conjugio, Repudio, et Divortio.*

Polanus professoris Theol. nuper in Academia Basilienfi Judicium.

Conjugium inter eos, qui non sunt neque vel arte Spadonis, aut quibus natura non est, sed facio aut veneficio. Tales enim persone nequaquam sunt conjugales. Nec etiam nuptiis celebratis, cum utramque explorata est Spadonis frigiditas, seu toto triennio tentata est naturæ læsæ modificatio, Juxta pronuntiare potest illas personas liberas esse. *Polanus lib. 10. Synag. cap. 53.*

The Opinion of Polanus, late Professor of Divinity in the University of Basil.

They who are not eunuchs, by nature or art, or they whose nature is not injured by witchcraft or poison, may enter into matrimony; for the former persons can by no means be married, and therefore after the nuptial ceremonies, if the impotence of the eunuch has been evinced for three years, or the cure has been attempted for three years together, the judge may pronounce that the parties are free. *Polanus, lib. 10. Synag. cap. 53.*

Articuli nuper Professoris Theol. in Academia Marpurgensi Judicium.

Inter personas quæ propter frigiditatem aliudve naturæ vitium ad usum conjugii sunt ineptæ, cum non sit conjugium, teste Christo, Mat. 19. divortium hic locum habere poterit. Si quam igitur personam talem alteri jungi contingat, Juxta, explorata frigiditate aut naturæ vitio, utramque personam liberam pronuntiabit. Porro ad explorandam frigiditatem Jura trienni tempus præscribunt, præsertim si res dubia sit. Idem judicium est de eis quorum natura vel fascino vel veneficio ita sit læsa, ut ad conjugii usum reddantur inepti; & omnem medicorum operam intra triennium inanem fuerint experti. Hæc Arcularius in arcu foederis, cap. 28.

The Opinion of Arcularius, of J. Marburg, lately Professor of Divinity in the Academy of Marburg.

A divorce may be granted between the persons, which on account of impotency or any other defect of nature, are not fit for matrimony, as appears from the words of Christ, Mat. 19. If therefore any such person should chance to be married, the judge, after he has discovered the impotence

the member of generation, why should any interval be assigned.

Zanchii Judicium.

Quemadmodum Beza, sic nec Canchius impotentiam ex veneficio attigit, sed tantum docet, quosdam esse casus, quibus matrimonia in ipsa Ecclesia benedicta nulla sint, & subinde hæc exempla subjungit. Si cum eo contrahitur, qui vir non erat, sed spado, aut propter perpetuum ei insanabilem morbum, officium conjugis præstare nullo modo potest. Hæc Zanchius lib. 4. de op. Dei, cap. 3. sed illam nec scripturæ testimoniis nec rationibus confirmat.

The Opinion of Zanchius.

Zanchius, as well as Beza, makes no mention of impotency arising from witchcraft, or poison, but only intimates, there are some cases, in which marriages are not blessed by the church, and afterwards subjoins these examples. If it be contracted with one who is not a man, but an eunuch, or one, who on account of an incurable disease can by no means perform the duty of a husband. This is the opinion of Zanchius, lib. 4. de op. Dei, cap. 3. but he supports it by proofs drawn from scripture.

The King's Answer.

TO the first article that the scripture doth directly or by consequence contain sufficient matter to decide all controversies, especially in this appertaining to the church: This in my opinion is preposterous, and one of the puritan arguments, without a better distinction or explanation.

For the orthodox proposition is, That the scripture doth directly, or by consequence, contain in it sufficient matter to decide all controversies in points of faith

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and salvation, of which sort a nullity of marriage cannot be accounted for one; and therefore your consequence upon the former proposition must fail.

For further satisfaction of your following question (I say) your second question doth answer it, if there be warrant in scripture for pronouncing a nullity *propter frigiditatem*, then all the means which may make him *frigidus versus hanc*, must be comprehended therein; for why doth our church justly condemn the marriage of a man with his sister's daughters, or the marriage of two sisters, but *ut paritate rationis*, for none of them are *in terminis* prohibited by the scripture, only the conclusion is gathered *a paritate rationis*. For if it be not lawful to marry the father's wife, because thereby you discover your father's shame; nor his sister, because she is his kinswoman; nor your own sister, because thereby you discover your father's and your mother's shame: it can no more be lawful to marry your sister's daughter, for thereby also you discover your own shame; as also the same reason serves for ascending or descending in points of consanguinity, *quia par est ratio*.

The like is in this case; for although Christ spake only of three sorts of eunuchs, yet *ratio est quia non potest esse copulatio inter eunuchum et mulierem*; and therefore St. Paul, 1. Cor. vii. telleth us clearly, that it is not *conjugium sine copulatione*. I conclude, therefore, *a paritate rationis*, that Christ did comprehend under these three sorts all inability which doth perpetually hinder *copulationem versus hanc*, whether it be natural or accidental; for what difference is there between cutting off the hand, and being made impotent thereof? *Amputatio et mutilatio membri*, is all one in the civil law; and that is a like defrauding of the woman, when either he who is to be her husband is gelded, or when the use of that member towards her is by any unlawful means taken

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from him. Neither is it any way needful to crave the particular warrant of scripture for a nullity; no more than of warrant in this place for any nullity at all; for Christ doth not directly say, that a marriage so married shall be nullified, neither doth he teach us what form or process shall be used in that, neither makes he mention of the triennial probation, no more than he forbiddeth marriage within the fourth degree, without leave obtained of the Bishop of the Diocese. It is then sufficient to all moderate Christians to be taught out of the word of God, that marriage is *nulla sine copulatione*; and these words, *quos Deus conjunxit*, are never found in scripture, where *Et erunt eis* doth not proceed, viz. they two shall be one flesh.

But whether the impediment be universal, or *versus hanc* only; or whether the fault thereof hath been born with him, or done to him by violence, or fallen unto him by disease, or disproportion, or inaptitude betwixt the parties, or unnatural practices, that is ever *par ratio*, he is *eunuchus versus hanc* & *omnes alias*, seeming to him only was she married.

Then *paritate rationis*, such nullities are grounded upon the aforesaid warrant of scripture; neither had Christ any occasion to speak of the Jews marriage concerning *maleficium versus hanc*, for though it be apparent that God made King Abimelech and his servants unable to abuse Sarah, Abraham's wife, and so was he made by God himself *eunuchus versus hanc*, and that be not improbable that the Devil being God's ape, should imitate God's works, by his filthy witchcraft, by making such as God will permit him, unable *versus hanc*; howbeit, it is very probable that it was long after that time the Devil put that trick upon the earth.

As for the third and fourth questions, what mention the fathers and councils do make of *maleficium versus hanc*, I answer,

that it may be (if they were well searched) that either something to this purpose in them, or at the least *aliquid analogum*, with a *paritate rationis*, or by consequence, may serve to decide the question.

But leaving this to search, my main answer is, That we must distinguish oftentimes: for in all the first ages, as long as persecution lay heavy upon the church, and before the empire became Christian, the church did not meddle with any thing, which drew a consequence after it of possessions, or inheritance, as marriage doth; nay, even divers hundred years after the conversion of the emperors, the judgment and decision of all such questions did still remain in *foro civili*, till the Popedom began to wax great, and assume, or rather usurp to herself, a supreme and independent judicatory in all ecclesiastical causes; and therefore the fathers and councils had no occasion to make mention of that which was not *de presertim* at that time.

And besides, that is an evil argument to say such a thing is not lawful, because the Fathers and Councils made no mention of it: for you know much better than I, divers and many points betwixt the Papists and us are never mentioned by the Fathers, because they could never have dreamed that such questions would arise; and therefore are the Fathers exact only in such questions as were agitated upon the state at that time, as *De Trinitate*, *de Unibus in Christo Naturis*, and such like: and therefore 'tis sufficient that there can be nothing found, which may justly be understood to contradict this opinion.

And it is very probable (as I said before) that this trick of *maleficium* had not then been put in practice in the world, and therefore not known or mentioned by them; for why may not the devil as well find out new tricks of witchcraft (when God will permit him) as he did daily new sects of heresies?

heresies? for his malice can never end untill the end of time.

To the fifth argument, my former answer doth also serve; for till the 400th year after Christ, it may be that devilish trick came never to be discovered. You know the old proverb, *Ex malis moribus boni leges*: and it is not unlikely, that the time of darkness gave the Devil occasion to devise such new tricks (look my *Demonology*); and yet was that law for which you cite Hecanus, by Charles the Great, who in many great points (as you know) had so great light, as I do scarce term this time a time of blindness; but howsoever the darkness was in points of superstition, I will still maintain (as I have ever done) that for matters of order and policy, all the world shall never be able to find out any so good, and so old an order of argument to be put in the place of it: in sign whereof there is no well governed commonwealth in the christian world, wherein the common law is not received to judge in questions of that nature; and it is certain, that this question now in hand is only a question of order and policy: for the ground of this question, that the essential point of matrimony cannot be accomplished *sine copula*, is warranted by express scripture, and confessed by yourself.

To your sixth argument (or rather hope) I fear that hope shall prove contrary to faith; for as sure as God is, there be Devils, and some Devils must have some power, and their power is in this world; neither are the Elect exempted from this power; Job was not, Paul was not, Christ said to all his disciples, *Graveveris vos Sabbathum*; and if the Devil hath any power, it is over the flesh, rather over the filthiest and most sinful part thereof, whereunto original sin is soldred: as God, before and under the law, to shew *officalem* of purging man's original sin, ordained the *Præputium* of the foreskin, and to exempt this

of our profession from the power of witchcraft, is a paradox never yet maintained by any learned or wise man.

That the Devil's power is not so universal against us, that I freely confess; but that it is utterly restrained *quoad nos*, how was then a Minister of Geneva bewitched to death, and were the witches daily punished by our law; if they can harm none but the Papists, we are too charitable for avenging of them only.

Satan is permitted to punish man, as well for his breach of the second as of the first table, and thereof are we no less guilty than the Papists are; and if the power of witchcraft may reach to our life, much more to a member, not so governed by the fancy, wherein the devil hath his principal operation; and he may so estrange the husband's affection towards the wife, as he cannot be able to perform that duty to her; for that is a common thing in many mens natures, that they cannot do that thing but where they love, nor fight but where they are angry. God keep us therefore from putting the trial of our profession upon miracles, let the Miracle-mongers live by their own trade.

To the seventh argument touching remedies, what do you know, whether both parties, or either of them hath used these means of remedy or not? And that special remedy should be used publicly, for there I can see no necessity, for *Non interest Reipub. nec Eccles.* and private persons are commanded to their fasting and alms, secretly and in private; no such cure also is likely to succeed, well, except the parties own hearts and desires be set thereupon.

And as for your conclusion upon your *Incommadum*, whether upon his person or the example, I can see none in either, so as to the couple, between them marriage was never accomplished truly; they will peradventure both of them by the declaration of the nullity be capable to accomplish marriage

riage with others, which they could never do between themselves; wherein they may have the satisfaction of their hearts, and enjoy the blessing of procreation of children.

And as for the example, the law shall be fulfilled with due administration of justice, which cannot prove for an example or precedent of a counterfeit nullity hereafter, *Autoritas facti*, or rather *non facti*, *sed luce clarior* in this case, besides the many probations and confessions of the parties which have been taken in this process: whereas by the contrary, they shall be forcibly kept together, but never their persons or affections; and they still be forced to live in perpetual scandal, or misery, or both; and what such a kind of forced continency may avail, the monks continency may teach us: and for a precedent in time to come, that reacheth no further, than to open a way of lawful relief, to any person who shall chance to be distressed in that sort.

And for legal doubts, they concern none of the calling; if your conscience be resolved in points of divinity, that is your part to give your consent to the nullity, and let the lawyers take the burden of making that firm; and as for the triennial probation, I hope no man can be so blind as to make a doubt, whether that be taken before or after the suit begun: and in conclusion of divine solution of this question proved clearly, that this resolution of this doubt, howsoever it was in blindness as you think, that is now proved in the greatest time of light and purity of the profession of the gospel.

And for your extract upon the late divines opinions, upon this question, I can-

not guess what your intent was in sending them to me, for they all agree in terms with my opinion: but there is such a thing as *Maleficium, et Maleficiale versus hanc*; and your very interlude passages prove that clearest: and for that advice concerning the remedies, that is but *Consilium non decretum*, not imposing a necessity; but is to be used by discretion, as occasion shall prove and require it.

To conclude then, if this may satisfy your doubts, I will end with our Saviour's words to St. Peter, *Cum conversus fueris, confirma fratres tuos*; for on my conscience, all the doubts I have yet seen, are nothing but *nodos in scirpo querere*.

The midwives appointed to make inspection upon the Lady's body, gave in, That the Lady Essex is a woman apt to have copulation, and to bring forth children, and that the said Lady is a virgin and uncorrupted.

Three Ladies affirm, That they believe the same, for that they were present when the midwives made the inspection, and did see them give good reasons for it.

There is a sentence of divorce given for the nullity of the marriage, and both parties licenc'd to be married again.

The Commissioners that gave sentence; Winchester, Ely, Litchfield and Coventry, Rochester, Bishops. Sir Julius Caesar, Sir Thomas Parrey, Sir Daniel Donae, Doctors.

The Commissioners dissenting; Archbishop of Canterbury, Bishop of London, Sir Juan Bennet, Francis James, Thomas Edwards, Doctors.

The

The Tryals of JOHN TWYN Printer, THOMAS BREWSTER, Bookseller, SIMON DOVER Printer, NATHAN BROOKS Bookbinder; the 20th and 22d of February 1663-4, 15 Car. II. Published by Authority.

FIVE several indictments being drawn up, viz. one of High Treason, against John Twyn Printer; and the other four for sedition, viz. two against Thomas Brewster Bookseller, one against Simon Dover Printer, and one against Nathan Brooks Bookbinder; were presented to the Grand Inquest in London, at the sessions of Goal-delivery of Newgate, holden at Justice-Hall in the Old-Bailey, the 19th day of February, 1663. Except that against Brooks, which was found the day following, by the same Inquest. And after divers witnesses were sworn and examined before the Grand Inquest, the said bills of indictment were severally returned *Billa Vera*.

The names of the said Grand Inquest being as followeth, viz.

Arthur Jourdan,	Roger Hart,
Arthur Browne,	John Watson,
Simon Rogers,	Christopher Pitts,
James Whetham,	Thomas Gerrard,
Ralph Blore,	John Cropper,
Isaac Barton,	Thomas Partington,
Roger Locke,	Ralph Coppinger,
Thomas Cooper,	Matthew Pelazer,
Samuel Taylor,	

At Justice-Hall, in the Old-Bailey, February 20. in the Morning.

THE Court being set, Proclamation was made: "O yes! All manner of persons that have any thing more to do at this Sessions of the Peace, and Sessions of
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Oyer and Terminer, held for the city of London, and Sessions of Goal-Delivery holden for the city of London and county of Middlesex; draw near and give your attendance, for now the Court will proceed to the Pleas of the Crown of the said city and county."

God save the King.

Silence commanded.

Clerk of the Peace. Set John Twyn to the bar: [who was set there accordingly.] John Twyn, hold up thy hand.

Twyn. I desire to understand the meaning of it. [But being told he must hold up his hand in order to his tryal, he held it up.]

Clerk, &c. "Thou standest indicted in London, by the name of John Twyn, late of London, Stationer, for that thou as a false traitor against the most illustrious Charles the Second, by the grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. thy supreme and natural Lord and Sovereign—not having the fear of God in thine heart, nor weighing the duty of thy allegiance, but being moved and seduced by the instigation of the devil; and the cordial love, true duty, and natural obedience, which true and faithful subjects towards our Sovereign Lord the King bear, and of right ought to bear, altogether withdrawing; minding and with all thy
Y y force

force intending the peace and common tranquillity of this kingdom to disturb; and sedition and rebellion within these his Majesty's kingdoms to move, stir up; and procure; and discord between our said Sovereign and his subjects to make and move; the 27th day of October, in the year of the reign of our said Sovereign Lord Charles the Second, by the Grace of God, &c. the 15th, at the parish of St. Bartholomew's, in the ward of Farringdon Without, London, aforesaid, traitorously didst compose, imagine and intend the death and final destruction of our said Sovereign Lord the King, and the ancient and regal government of England to change and subvert; and our said Sovereign Lord the King, of his crown and regal government to depose and deprive. And these thy most wicked treasons and traitorous imaginations to fulfil, thou the said John Twyn, the said 27th day of October, in the year aforesaid, in the parish and ward aforesaid, advisedly, devilishly, and maliciously didst declare, by imprinting a certain seditious, poisonous, and scandalous book, entitled, "A Treatise of the Execution, of Justice, &c."—In which said book, amongst other things, thou the said John Twyn, the 27th day of October, in the year aforesaid, in the parish and ward aforesaid, falsely, maliciously, and traitorously didst imprint, &c.—against the duty of thy allegiance, and the statute in that case made and provided; and against the peace of our said Sovereign Lord the King, his crown and dignity."

What say'st thou, John Twyn, art thou guilty of this high treason whereof thou standest indicted, or not guilty?

Twyn. I desire leave to speak a few words: My Lord, I am a very poor man; I have been in prison several months—

Clerk. Are you guilty, or not guilty?

Twyn. With all due submission to your honours, I desire to speak a few words—

Ld Ch. Just. Hyde. You must first plead to your indictment, and then you may say what you will; that's the rule of the law. We receive no expostulations till you have pleaded to the indictment, guilty or not guilty.

Twyn. I do not intend to answer to the indictment, by what I shall now say; I am a poor man, have a family and three small children, I am ignorant of the law, and have been kept prisoner divers months—

Ld Ch. Just. Hyde. Pray plead to the indictment; you shall be heard, say what you will afterwards.

Twyn. I humbly thank you, my Lord.

Clerk. Are you guilty, or not guilty?

Twyn. I beseech you to allow me counsel, and some consideration; I desire it with all submission.

Ld Ch. Just. Hyde. You must plead first, then ask what you will.

Clerk. Are you guilty, or not guilty?

Twyn. Not guilty of those crimes.

Ld Ch. Just. Hyde. God forbid you should.

Clerk. How wilt thou be try'd?

Twyn. I desire to be try'd in the presence of that God that is the searcher of all hearts, and the disposer of all things.

Ld Ch. Just. Hyde. God Almighty is present here; there is no other trial by the law of England, but by God and the peers, that is the country, honest men. You shall have all your challenges, and all that's due to you, by the help of God; we are bound to be your counsel, to see you have no wrong: therefore put yourself upon your trial, say how you will be try'd.

Twyn. I desire to be try'd in the presence of God.

Ld Ch. Just. Hyde. So you shall: God Almighty is present here, looks down, and beholds what we do here; and we shall answer severely, if we do you any wrong. We are as careful of our souls, as you can be

be of yours. You must answer in the words of the law.

Twyn. By God and the country.

Clerk. God send thee a good deliverance.

Ld. Ch. Just. Hyde. Now say what you will.

Twyn. I am a very poor man.

Ld. Ch. Just. Hyde. Nay, let me interrupt you thus far: Whatever you speak in your defence, to acquit yourself of this crime, that you may reserve till by and by. This is but an arraignment; afterwards the evidence for the King is to be heard, then make your defence. If you have any witnesses on your part, let's know their names, we'll take care they shall come in. If I did not mistake, you desired to have counsel; was that your request?

Twyn. Yes.

Ld. Chief Justice Hyde. Then I tell you, we are bound to be of counsel with you in points of law; that is, the court, my brethren and myself, are to see that you suffer nothing for your want of knowledge in matter of law; I say, we are to be of counsel with you. But for this horrid crime, (I will hope in charity you are not guilty of it; but if you are) it is the most abominable and barbarous treason that ever I heard of, or any man else. The very title of the book (if there were no more) is as perfectly treason as possibly can be. The whole book through, all that is read in the indictment, not one sentence, but is as absolute high treason, as ever I yet heard of. A company of mad-brains, under pretence of the worship and service of God, to bring in all villanies and atheism, (as is seen in that book). What a horrid thing is this! But you shall have free liberty in defending yourself. To the matter of fact, whether it be so or no. In this case the law does not allow you counsel to plead for you; but in matter of law, we are of counsel

with you, and it shall be our care to see that you have no wrong done you.

Clerk. Set Simon Dover to the bar; (Who being set, his indictment was read to the purpose following.)

Thou standest indicted in London, by the name of Simon Dover, late of London, Stationer, for that thou, &c. the 15th day of February, in the 13th year of the reign, &c. at the parish of St. Leonard's Fosterlane, in the ward of Aldersgate, London, falsely, maliciously and wickedly, didst imprint a certain false, malicious, scandalous and seditious book, entitled, "The Speeches and Prayers of some of the late King's Judges, &c." and the same didst sell and utter, against the duty of thy allegiance, &c. How sayest thou, Simon Dover, art thou guilty of this sedition and offence, whereof thou standest indicted, or not guilty?

Dover. My Lord, and the honourable bench, I desire I may be heard a few words—

Ld. Ch. Just. Hyde. When you have pleaded, you shall.

Dover. I shall be willing to plead—

Ld. Ch. Just. Hyde. You must either confess it, or plead Not Guilty. I hope you are not guilty of this foul crime.

Dover. I am not, by the laws of England, guilty.

Ld. Ch. Just. Hyde. You shall be tried by the laws of England, whether you are guilty or no.

Dover. I am willing to be so, and I am glad I am come before you to that purpose, having been long a prisoner: I am not guilty of any thing in this indictment, neither as to matter, time nor place.

Ld. Ch. Just. Hyde. What do you mean by time and place?

Dover. I am not guilty in manner or form. And now, my Lord, I being altogether ignorant of the law, I humbly beg counsel.

counsel, and a copy of my indictment: I hope I shall not be destroyed, because I am ignorant of the law: I have been eighteen weeks close prisoner.

Ld Ch. Just. *Hyde*. What would you have?

Dover. I desire time, and counsel assigned me, and a copy of my indictment.

Ld Ch. Just. *Hyde*. For a copy of your indictment, though it be for a foul offence, yet (in favour to you, it being not made so capital as the other) we cannot deny it you: For counsel you may have what you will, we need not assign it. (Make him a copy,) but I will tell you, we shall try it now.

Dover. I do protest I knew not what I came for; I never imagined what my indictment was, I know not what there's in't—

Ld Ch. Just. *Hyde*. You shall have a copy made presently. If you have counsel or witnesses, send for them; we must try you to-day; but you will have some time, for we will begin with the other.

Dover. I beg I may have a copy of the indictment in English, I cannot understand Latin.

Ld Ch. Just. *Hyde*. That that is against you, is in English; the Latin signifies no more, but that you did seditiously and maliciously print all that which is in English.

Dover. I hope I have done nothing, but I shall acquit myself of.

Ld Ch. Just. *Hyde*. I hope you may; but we can give you nothing but a copy of the record: send for your own clerk to understand it.

Clerk. Set Thomas Brewster to the bar: (who was set; and then his indictment was read, which was;)

That he the said Thomas Brewster, late of London, Stationer, not having, &c. (in the form aforesaid) the 15th day of February, &c. at the parish of Little St. Bartholomew's, in the ward of Faringdon

Without, London, maliciously, &c. did cause to be imprinted the aforesaid book of Speeches and Prayers, &c. and the same did sell and utter, against the duty, &c.

Who being demanded, Whether he was guilty of that sedition and offence? answered, Not Guilty.

Clerk. How will you be tried?

Brewster. By God and the country.

Clerk. God send thee a good deliverance.

Ld Ch. Just. *Hyde*. Say what you will now.

Brewster. May it please your Lordship, I am wholly ignorant of the proceedings of the law; I have been a close prisoner these eighteen weeks, no body to advise with me, scarce my wife suffered to come to me; I desire some time to take advice.

Ld Ch. Just. *Hyde*. I doubt we shall not be able, if you mean till next sessions—

Brewster. No, my Lord, I have had too long imprisonment already, would I had been here the first sessions after I was a prisoner.

Ld Ch. Just. *Hyde*. If you desire a copy of the indictment and counsel, you shall have it.

Brewster. I humbly thank you; but I must have time to consult them, or they will do me little good.

Ld Ch. Just. *Hyde*. If you have any friends or witnesses, you may send for them.

Brewster. I thank you, my Lord.

Clerk. Thomas Brewster, thou standest again indicted in London, by the name of, &c. for that thou not having, &c. the 10th day of July, in the 13th year, &c. at the parish of Little St. Bartholomew's, in the ward of Faringdon without, London, &c. falsely, maliciously, scandalously and seditiously, didst cause to be imprinted a Book, intitled, "The Phoenix, or the Solemn League and Covenant, &c."—And the said book didst sell and utter, against the duty, &c. How sayest thou? Art thou

thou guilty of this sedition and offence whereof thou standest indicted, or not guilty?

Brewster. Not guilty, my Lord.

Clerk. How will you be tried?

Brewster. By God and the country.

Clerk. Nathan Brooks to the bar.

Thou standest indicted in London by the name of Nathan Brooks, late of London, Stationer; not having, &c. (The same as to make, time and place, with that of Dover's) and knowing the said book to be scandalous and seditious, did sell, utter and publish the same, against the duty, &c. How sayest thou, Nathan Brooks, art thou guilty of this sedition and offence whereof thou standest indicted, or not guilty?

Brooks. Not guilty.

Clerk. How will you be tried?

Brooks. By God and the country.

Clerk. God send thee a good deliverance.

Ld Ch. Just. Hyde. If you desire to have a copy of your indictment and counsel, you may have it.

Brooks. I am a poor man, I have not money to get counsel; I hope I shall not want that that belongs to me by law, for want of money.

Ld. Ch. Just. Hyde. You shall not, by the grace of God.

Clerk. Set John Twyn, Simon Dover, Thomas Brewster, and Nathan Brooks, to the bar.

Clerk. John Twyn, those men that you shall hear called, and personally appear, must pass between our sovereign Lord the King and you, upon trial of your life and death; if you will challenge them or any of them, you must do it when they come to the book to be sworn, before they be sworn. And you that are for seditions and offences, look to your challenges.

Dover. We desire we may have a jury of booksellers and printers, they being the men that only understand our business.

Ld Ch. Just. Hyde. There are those already that understand it as well as booksellers or printers; besides, half the jury are such, and they are able to make the rest understand it: but you may challenge whom you will.

The Jury were,

William Samborne	William Hall
William Rutland	John Williams
Thomas Hoyle	James Flether
Robert Lucas	Simon Waterston
Robert Beverham	Samuel Thomson
Richard Royston	Thomas Roycroft.

Who were severally sworn by the oath following:

You shall well and truly try, and true deliverance make, between our sovereign Lord the King, and the prisoners at the bar, whom you shall have in charge, according to your evidence. So help you God.

All Four. We are all satisfied with the jury.

Clerk. Cryer, make proclamation. O Yes, If any one can inform my Lords the King's Justices, the King's Serjeant, or the King's Attorney, before this inquest be taken between our Sovereign Lord the King and the prisoners at the bar, let them come forth; and they shall be heard; for now the prisoners stand at the bar upon their deliverance; and all others that are bound by recognizance to give evidence against any of the prisoners at the bar, come forth and give evidence; or else you will forfeit your recognizance.

Clerk. John Twyn, hold up thy hand. You of the jury, look upon the prisoner, and hearken to his cause; you shall understand that he stands indicted in London, by the name of John Twyn, late of London, Stationer: (Here the indictment is read over again.) Upon this indictment he hath

Z z

been

been arraigned, and thereunto hath pleaded Not Guilty; and for his tryal, hath put himself upon God and the country, which country you are: Your charge is to enquire whether he be guilty of the high treason, in manner and form as he stands indicted, or not guilty: if you find him guilty, you shall inquire what goods and chattels, lands and tenements he had at the time of committing the said treason, or at any time thence. If you find him not guilty, you shall inquire whether he fled for it; if you find that he fled for it, you shall inquire of his goods and chattels, lands and tenements, as if you had found him guilty: If you find him not guilty, nor that he did fly for it, say so, and no more, and hear your evidence.

Mr. *North*, Barrister of the law. John Twyn stands here indicted, for that he as a false traitor to the most illustrious Charles the Second, &c. not having the fear of God before his eyes, nor weighing the duty of his allegiance, &c. (Here was opened the form of the indictment) To which he hath pleaded Not Guilty; if there shall be sufficient evidence given you of the charge in the indictment, you must do the King and the nation that justice, as to find him guilty, that sentence of law may pass on him.

Mr. Serjeant *Morton*. May it please your Lordships, and you gentlemen that are sworn of this jury, I am of counsel with the King against John Twyn, the prisoner here at the bar, who stands indicted of a most horrid and damnable treason: It is, the compassing and imagining the death of the King, to deprive him of his crown and royal government, and to alter and change the antient legal and fundamental government of this kingdom; which he has endeavoured to do, and did intend to do, by printing a traitorous and seditious book, which in itself contains as many and as great treasons, as it was possible either for

the malice of the devil, or the corrupt and treasonable thoughts of blood-thirsty men to invent: It contains treasons against the King in his own royal person; against his government, both ecclesiastical and civil; full of treasons, (as my Lord Chief Justice was pleased to observe to you) treasons against the Queen, scandals against all manner of professions both in church and kingdom, of magistracy and ministry. My Lord, there are in this indictment thirteen paragraphs of that treasonable book recited; and each of them contains as many treasons as there be lines in it. Nay, my Lord, this treasonable book was intended to set a flame in this nation, to raise and stir up rebellion in this kingdom against the King and his government. I shall observe to your Lordship the time when it was to be printed; it was in the beginning of October, your Lordship knows, and I do not doubt but the jury have heard, that there was a great and dangerous design in this nation, set on foot by men of dangerous principles, to imbroid this nation in a new war, for the destruction of the King and his government. It was executed in part, as far as time and other circumstances would give way and leave to the undertakers, (the 12th of October last;) and, my Lord, it was proved upon the execution of a commission of Oyer and Terminer at York, that there was a council here in London, that sat to prepare matter for an universal rebellion all England over. They sent their agitators into the north, west, all parts, to give notice to their party to be ready to rise at a certain time: several days were appointed, but it seems they could not be ready till that 12th of October; for the seditious books that were to lead on that design; and the libels and declarations could not be printed before that day; and truly that had been printed and published too, if there had not been great diligence used by the King's agents and ministers, to take

take them just as they were preparing it. This book, gentlemen, doth contain a great deal of scandal upon the King's government, dispersing false and base rumours, to the prejudice of it. It is a rule in my Lord Coke, That the dispersing of false and evil rumours against the King and government, and libels upon Justices of the kingdom, they are the forerunners of rebellion.

We shall now go to the proof: We shall prove that this prisoner at the bar, to print this book, had two presses in one room; that he himself did work at one of those presses, his servants at the other, by his command, and in his presence; that he did compose part of it, print the sheets, correct the proofs, and revise them all in his own house, which were corrected, and brought back into the work-house by himself, in so short a time, that they could not be carried abroad to correct; so that he must needs correct them himself; that this work was done in the night-time, (and it was proper, it was a deed of great darkness, and not fit indeed to see the light; and it was well it was strangled in the birth, or else, for ought I know, we might by this time have been wallowing in our blood.) We shall make it appear, that this man, when Mr. L'Estrange came to search his house, brake the forms, conveyed away as many of the sheets as he could from the press to other places; yet notwithstanding, God's Providence was so great in the thing, that he left there three or four sheets, which Mr. L'Estrange then seized on, and many more within a little time after: And somewhat of the same matter remained upon part of a form of letter, which his haste would not give him leave to break. When he was charged with it by Mr. L'Estrange, he confessed that he had printed some sheets of this seditious book; and being demanded by Mr. L'Estrange, What he thought of it? He

told him, He thought it was mettlesome stuff: he had great joy in it; he confessed he had received money for printing of this, and much other matter, taken upon examination before Mr. Secretary. We shall call our witnesses; I should have observed to you, that this man would have it done with all the privacy that could be, and to be done forthwith; there was great haste of it, about the beginning of October, and the design in the north was upon the 12th; so that it was clearly intended for that design.

Several Witnesses new sworn.

Joseph Walker. My Lord, whereas my master is indicted for printing this book—

Ld Hyde. Your master! Who is your master?

Walker. He at the bar.

Ld Hyde. What say you of it?

Walker. I desire to see the book; (it was shewed him) about the four first pages of this treatise I composed.

Ld Hyde. Who delivered it to you to compose?

Walker. My master delivered the copy to me.

Ld Hyde. What do you mean by composing?

Walker. Setting the letters.

Ld Hyde. Well, and you set the letters to print according to the copy; and you had it of your master, had you?

Walker. Yes, my Lord; but all this copy we did not print.

(Part of the copy in manuscript being shewed him, he said, he composed by that copy.)

Serjeant Morton. How much did you print?

Walker. About three sheets.

Serj. Morton. How many of those did your master compose?

Walker. Truly, Sir, I cannot tell.

Ld Hyde.

Ld Hyde. Did he compose one?

Walker. As to a whole one, I cannot say.

Mr. Recorder. Did he compose the title?

Walker. Here is no title.

Mr. Recorder. No, read the top.

Walker. A Treatise of the Execution, &c. (He reads the title.)

Mr. Recorder. Did your master compose that?

Walker. No, I did.

Ld Hyde. Did your master give you that to compose?

Walker. Yes.

Serj. Morton. Who composed the second, third and fourth sheet?

Walker. I composed some of them, but to particularize, I cannot.

Ld Hyde. Who gave you what you did?

Walker. My master.

Ld Hyde. Can you turn to any part of that you did compose?

Walker. I cannot tell that.

Ld Hyde. You composed, you say, four pages; there are eight in a sheet: who composed the other of the same sheet?

Walker. I think my master did.

Ld Hyde. At the same time, and in the same room with you?

Walker. He wrought not in the same room.

Ld Hyde. After you had stamp'd the sheet, who did peruse and over-read it, to see if it were right?

Walker. I carried them into the kitchen, and laid them down upon the dresser by my master.

Ld Hyde. Who compared them?

Walker. I know not.

Ld Hyde. Who brought them back to you?

Walker. My master brought them into the workhouse, and laid them down.

Ld Hyde. Was there any body in the house that might correct it?

Walker. Not that I saw.

Ld Hyde. When you had carried a sheet down, how long was it e'er it was brought back again?

Walker. About an hour, or an hour and a half.

Ld Hyde. Was there any body in the house besides you and your master?

Walker. There was my fellow-apprentice and the woman that keeps the house.

Ld Hyde. Were there no strangers there?

Walker. No, my Lord.

Mr. Recorder. Were they printed in your master's house?

Walker. Yes.

Serj. Morton. What room?

Walker. In the press-room.

Serj. Morton. Did your master work at the press about this work, any part of the time?

Walker. Yes, I saw him beat some sheets.

Ld Hyde. When you had printed one sheet, were there not some mistakes of the letters to be mended?

Walker. Yes, there were literals.

Ld Hyde. Who made the amendment?

Walker. Upon my oath I cannot tell.

Ld Hyde. Do you believe it to be your master's?

Walker. I cannot tell that.

Ld Hyde. Have you seen your master write heretofore?

Walker. I have seen him write, but because I have heard of them that could counterfeit mens hands, I dare not swear it was his writing.

Ld Hyde. Were the amendments that were brought back, like his hand?

Walker. The letters were something like them, but I cannot swear positively that they were his.

Ld Hyde. No, that you cannot, unless you saw him write them; but was it like his hand?

Walker. It was not much unlike his hand.

Mr. Recorder.

Mr. Recorder. Did not your master use to correct other works before this?

Walker. Yes.

Mr. Recorder. Then by the oath that you have taken, were not the corrections of this book like those of other corrections by his own hand?

Walker. I know not that.

Mr. Recorder. Did any body correct books in your house but your master?

Walker. No, Sir.

Serj. Morton. Did not you see your master with copy?

Walker. Yes, he had copy before him.

Serj. Morton. What time was this printed? by night or by day?

Walker. In the night-time.

Serj. Morton. What directions did your master give you about printing it, did he direct any privacy?

Walker. He was not much desirous of that.

Mr. Recorder. At what time did you work about it?

Walker. In the morning, from two till four or five.

Serj. Morton. Pray, Sir, thus; were you in the house when Mr. L'Estrange came up?

Walker. Yes.

Serj. Morton. Were you at work then or before?

Walker. Not when he was above, but immediately before, I was.

Mr. Recorder. You are not bound to conceal treason, though you are bound to keep your master's secrets.

Serj. Morton. What were you then at work upon?

Walker. Upon the signature D, the sheet D of this Treatise.

Serj. Morton. What did your master say, when you told him Mr. L'Estrange was below?

Walker. Very few words; I cannot be positive in them.

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Serj. Morton. To what purpose were they?

Walker. Hearing somebody knock at the door, I went down into the composing-room, and looked through the window, and saw people; I imagined Mr. L'Estrange was there, and I told my master: whereupon he said, "He was undone," or to that effect.

Mr. Recorder. Did he not wish you to make haste in composing it?

Walker. No, he did not.

Mr. Recorder. How long had you been at work upon it? how many days?

Walker. I cannot tell justly.

Mr. Recorder. You can guess.

Walker. About three or four days.

Mr. Recorder. Did not your master work in that time?

Walker. He was in the work-house, and did set letters.

Mr. Recorder. Did he not likewise print?

Walker. Yes, he did.

Serj. Morton. Did not you, by his direction, break the form when Mr. L'Estrange came to search.

Walker. I brake one indeed.

Serj. Morton. What became of the other?

Walker. My fellow-apprentice brake it.

Serj. Morton. By whole direction?

Walker. I had no order for it; I brought it down, and went to set it against a post, and it fell in pieces.

Serj. Morton. Did you ask your master who delivered him this copy to print?

Walker. I did ask him two several times; but he made no answer.

Ld. Hyde. Did he not say, "He would not tell you; or that it was no matter to you;" nor nothing?

Walker. Yes, he did afterwards say, "It was no matter to me."

Mr. Recorder. Did not your master nor fellow-apprentice tell you who brought the copy?

A a a

Walker.

Walker. No.

Mr. Recorder. And did not you know?

Walker. No.

Serj. Maitan. Was he not used to tell you the authors of books that you printed?

Walker. The authors he did not; but for whom they were printed he used to tell me. My Lord, I humbly beg pardon for what I did, I was his apprentice.

Ld. Hyde. How many sheets did you print?

Walker. Two reams on a sheet, which makes a thousand.

Ld. Hyde. The first page, being the title of it, your master brought to you to compose; at the same time when you were composing one part, your master was composing another part of the same sheet in the next room; and part of it your master did print as well as compose: I think you said this?

Walker. Yes.

Ld. Hyde. Likewise that the proofs were carried to him to overlook, and he brought them back within an hour, or an hour and half after, and laid them down in the work-house; and that you saw the hand of the amendments, but you cannot swear it was his, only you say that it was not unlike it; and that he had corrected former sheets that you had printed, and that the hand with which he corrected others, and this, was alike; and that there was no stranger in the house to correct it?

Walker. Not that I saw.

Ld. Hyde. This is the substance of what you said?

Walker. Yes.

Mr. Recorder. Did your other man, or you, ever correct?

Walker. No.

Mr. Recorder. Did he use other correctors at any time?

Walker. Yes, about some books.

Mr. Recorder. What books.

Walker. "Hooker's Ecclesiastical Policy."

Ld. Hyde. You did rise to work at two of the clock in the morning about it; and your master said when you told him Mr. L'Estrange was below, that he was undone?

Walker. It was so, my Lord.

Mr. North. Mr. L'Estrange, pray tell my Lord and the Jury of your taking this.

Mr. L'Estrange. My Lord, I do remember that three or four days, or thereabouts, before the 12th of October last, I had notice of a press that had been at work for several nights in Cloth-Fair, and employed a person to watch the house; who told me that they still gave over early in the morning, at day-light, or soon after. At length intelligence was brought me in these words, "That now they were at it as hard as they could drive," (which was about four in the morning.) I arose, went to one of the King's messengers, and desired him to take a printer by the way; who did so: and I called up a constable, and so went to Twyn's house, where we heard them at work. I knocked a matter of a quarter of an hour, and they would not open the door; so that I was fain to send for a smith to force it; but they perceiving that, opened the door, and let us in. There was a light when we came; but before the door was opened, it was put out. When I was got up stairs, and a candle lighted, I found a form broken, (that is, the letters dispersed) only one corner of it standing entire; which was compared by a printer that was there, with a corner of a page newly printed, and appeared to be the same. This form was brought down out of the press-room into the composing-room. As yet we could not find the whole impression; but at last they were found thrown down a pair of back-stairs. I remember they told me the impression

pression was a thousand. I asked him where he had the copy? He told me, "He knew not; it was brought to him by an unknown hand." I told him he must give an account of it. He told me at last, "He had it from Calvert's maid." I asked him where the copy was? He told me, "He could not tell." (When I speak of the copy, I mean the manuscript.) We searched near two hours, and could not find it: and at length went thence to the constable's house in Smithfield, and staid there a while with the prisoner. I asked him, Mr. Twyn, said I, who corrected this sheet? "Alas, said he, I have no skill in such things." "Who revised it then?" "Who fitted it for the press?" "Truly I had no body but my self; I read it over." What thought you upon reading it? "Methoughts it was mettlesome stuff: the man was a hot fiery man that wrote it." But he knew no hurt in it.

Serjeant Morton. When you had taken these sheets, were they wet, or not?

Mr. L'Estrange. They were not only wet, but half of them were imperfect, printed only on one side. Missing the copy, I told him after he was carried to Whitehall; Mr. Twyn, (said I) it may possibly do you some good yet, to bring forth the copy: If you will be so ingenuous to produce the copy, and discover the author, you may find mercy for yourself; pray therefore get this copy: perchance I may make some use of it. After that, his servant Bazilla Winsor, brought out this part of the copy: [producing a sheet of manuscript in court.]

Ed Hyde. Joseph Walker, was the whole copy of this book in the house at that time, when you composed that which you did?

Walker. I cannot tell: I saw it but sheet by sheet.

Mr. Recorder. Did not you see the whole entire copy in your master's hand?

Walker. No: But [taking some part of the manuscript in his hand, said] this is the hand that I composed by.

Mr. Recorder. Mr. L'Estrange, where had you the entire copy?

Mr. L'Estrange. It was only the copy of the last sheet, that I took in the press.

Mr. Recorder. Who helped you to that?

Mr. L'Estrange. Bazilla Winsor, by direction of the prisoner, as I conceive: for I told him, if you can help me to the copy, it may do you some good; and soon after part of it was brought me by her. I asked Mr. Twyn further, How did you dispose of those sheets which you had printed, those several heaps, whither are they gone? He told me, he had delivered those sheets to mistress Calvert's maid, at the Rose in Smithfield.

Mr. Recorder. You say he told you mistress Calvert's maid received them of him; did you since speak with that maid?

Mr. L'Estrange. I was long in searching Twyn's house, and one of his apprentices made his escape, and probably gave notice of it: for the night I went to mistress Calvert's house, she and the maid too were fled. I have since taken the mistress, and she is now in custody. I have heard nothing of the maid since.

Justice Keeling. Twyn owned to you that he had corrected some of the sheets; that he had read them, and said, It was mettlesome stuff.

Mr. L'Estrange. I did ask him in the house of the constable, Who corrected this? The corrector must certainly know what it was. Said he, "I have no skill in correcting." But when I speak of "correcting," I mean who "revised" it, "overlooked" it for the press? "I read it over," says he.

Twyn. I never said such a word.

Mr. L'Estrange. He spake this in the presence of two or three here present. Could you

you read over this book, said I, and not know that it was not fit to be printed? "I thought it was a hot fiery fellow; it was mettle, or mettlesome stuff;" somewhat to that effect.

Serjeant *Morton*. What did you hear him confess before Sir Henry Bennet?

Mr. *L'Estrange*. He owned the thing; that is, he acknowledged he had printed the sheet I shewed there, and two other sheets of the same Treatise.

Serjeant *Morton*. Did he acknowledge he corrected them?

Mr. *L'Estrange*. I know not whether before Sir Henry Bennet he did, or no.

Serjeant *Morton*. What know you about money received by him?

Mr. *L'Estrange*. He said Calvert's maid paid him 40s. in part for that work.

Twyn. I said I had received money of Calvert's maid for work I had done; but named not that.

Mr. Dickenson sworn.

About the 7th day of October, it being Wednesday, as I remember, about five o'clock, we attended Mr. *L'Estrange*, myself and others: We came to the house of the prisoner in Cloth-Fair, and upon the backside of his house we stood listening a good while, and heard presses a working. Upon that I came to the fore-part, by Mr. *L'Estrange's* order, and knocked; but none would answer: I took the constable's staff, and knocked again; and none would answer yet. After that Mr. *L'Estrange* knocked near half an hour; and nobody coming, he at last sent for a smith's hammer to force it open. Afterwards they came down, and opened the door. Then Mr. *L'Estrange* and the printer (Mr. Mabb) went up stairs: I continued below with the constable and the King's messenger, to observe whether any went in or out. After which, some sheets fell down on the other

side of the house. Meeting with one of them, and perceiving they had discovered the sheets they enquired after, I read some part of it; and finding what it was, I went up, and found the sheets thrown behind the door. Mr. *Twyn*, (said I) I wonder you would print such a thing as this: You could not chuse but know that it was very dangerous to do any such thing. He answered, That "he did not consider what it was." Questionless, said I, you could not but know it was very dangerous; for when you revised it, you must needs know the sense of it. I think it was a dangerous business; what did you think of it? Says he, "I thought he was a good smart angry fellow; it was mettlesome stuff;" or to that purpose. This was the substance of our discourse. I did see some of the sheets printed on one side, and some on both sides: the form lay disordered; yet not so, but there was a corner of it yet remaining, and I having the sheet in my hand did compare them together, and, to the best of my remembrance, I do remember these very words, "Execution of judgment, and Lord have."

Ld *Hyde*. Who did he say revised the press?

Dickenson. He seemed to confess that he had corrected it himself; for when I urged it to him, that he could not chuse but know the matter of it by reading it; Truly, says he, "I thought he was an angry smart fellow: It was good mettlesome stuff, indeed."

Judge *Keeling*. The question asked by my Lord, is, Whether he did confess he revised it, or whether you did collect it from his reply?

Dickenson. Truly, by that answer I guessed he corrected it.

Recorder. Did he confess that he read it?

Dickenson. I put that question to him; and to the best of my remembrance, he did not deny it.

Ld *Hyde*.

Ld Hyde. To Mr. L'Estrange he confessed he read it over.

Thomas Mabb sworn.

My Lord, I was with Mr. L'Estrange in this man's house; and being there, going up, we found the press had been lately at work. There was at each press a sheet laid; I took them off the tympan, (some of the jury understand that term:) they were just laid upon the points, printed on one side. I gave Mr. L'Estrange these two sheets, the same with these, (shewing two sheets) some were perfect, others imperfect. I could not find the form a great while. I gave him the sheet to peruse; and in the mean while I went down, and below I found the two forms, but broken: Somewhat indeed was standing; whereof I took part in my hand, and read in the letters. Mr. Dickenson having the sheets, he heard what I read, and looking on the sheet, found them agree.

Twyn. What were the words that you read?

Mr. Mabb. The words were "Execution and judgment, and Lord have"—There was a back pair of stairs out of his press-room, partly between his house and his neighbour's, and in the hurry they had thrown the sheets down there; part fell behind the door, and part at the bottom. When I questioned him how many was done, he said five hundred; but I adjudged those I saw to be about seven hundred and fifty. Looking again over the door, I espied the remainder of the sheets, about two hundred and fifty more, and I brought them together; and then he owned there was one thousand.

Ld Hyde. What else do you know?

Mr. Mabb. At the constable's house, I heard him use the words, That "it was nettlesome stuff," and that "nobody corrected it but himself."

Said I, I wonder you would offer to do it; you could not compose it, but you must understand it. Said he, "It was my bad fortune to meddle with it." Said I, you lost a press but a little while since, I wonder you would do this. He seemed to be sorrowful.

Serj. Morton. He did confess he corrected it.

Mr. Mabb. Yes, my Lord.

Twyn. No, my Lord, I did not.

John Wickham sworn.

Upon the 7th of October, as I take it, about four o'clock in the morning, Mr. L'Estrange came to my house, being one of the King's messengers, and told me I must go immediately with him to Cloth-Fair, and sent me to call one Mr. Mabb by the way. I met Mr. L'Estrange near Mr. Twyn's house between five and six o'clock: We had a constable, and went and knocked at the door; they knocked at least half an hour before they got in. I heard some papers tumbling down, and heard a rattling above, before they went up. But I stood at the back-door, to secure any from running out that way; and at last, when they said there were some sheets thrown into the next house, I went and looked, and there were two or three hundred, and they were wet, newly come off the press. That's all I can say.

Serj. Morton. Did you hear this man say that he had corrected it?

Wickham. No: But I having him in custody at my house, I asked him about it; he said, "It was a very bitter thing, that it was his unhappy fortune to meet with it."

Jury. Did he confess he printed it?

Wickham. Not to me.

Serj. Morton. He said, "It was a bitter thing;" and "that it was his unhappy fortune

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fortune to meet with it :” Make the best of that ; compare that with the rest of the evidence.

William Story sworn.

Gentlemen of the jury, upon the 7th of October last, early in the morning, I was sent for to Mr. L’Estrange into Cloth-Fair : We went to the house of this Twyn. After some time knocking, they went up stairs, and brought down several papers : I know not what they were. I went into the next house with Mr. Wickham, and there we found two or three hundred sheets, and brought them to Mr. L’Estrange. I asked the prisoner at my house, whether he could not write or read ? He said, “ Yes.” Did not you use to read what you printed ? He said, “ Yes.” Did not you know treason when you read it ? “ It was a fiery thing ; I did not mind it much ; but I should have got money by it.”

Mr. Mabb. He owned he had but a very small price for doing it.

Mr. Joseph Williamson sworn.

That which I can say is, That I know this [looking upon a paper] to be my own hand-writing, and to be the examination taken of this Twyn. I took it ; and he owned it after it was written.

Serj. Morton. What was the substance of it ?

Ld. Hyde. What did he confess before Mr. Secretary, when he was examined ?

Mr. Williamson. He said, That the copy of the book was brought to him by one Evans, maid to Mistress Calvert. That for the author, being asked if he knew him, he said he did not ; and that he had seen the copy of three sheets of the book ; that he had printed only two of those sheets, a thousand exemplaries of each.

Judge Keeling. Did he confess that ?

Mr. Williamson. Yes. And further, That he had delivered them to this Evans at the sign of the Rose in Smithfield ; that he himself had corrected those sheets he had printed, and that he had read them after they were printed ; that for his pains and printing of them, he had received forty shillings in part from this maid at the delivery of them at the Rose ; that the maid carried away those exemplaries from the Rose ; and that he parted with her at the door.

Serj. Morton. I hope you observe, gentlemen. We have now done : We desire the prisoner may give his answer to it ; and then we shall make our reply.

Ld. Hyde. What say you ? you have heard the witnesses, and what is laid to your charge.

Twyn. I did never read a line of it in my life.

Ld. Hyde. That’s impossible. I’ll tell you : first, your own man, who set part, swears you did both set and print part of this book yourself : you gave him the title to set. You composed one part of the book, whilst he was composing another part. Is it possible you could compose, and not read a line of it ? He tells you further, when the first sheet was printed, he brought it into the kitchen, and laid it down, knew not of any one in the house but yourself ; about an hour, or an hour and half after, you brought it back again corrected, laid it down ; and the hand that corrected it, was not unlike your hand upon other corrections of books. Pray brother Morton, let the jury have books, and Mr. Lee read the indictment, that they may see they agree.

Serj. Morton. I observed to you there were thirteen treasonable paragraphs ; you shall find them marked out in the margin.

Ld. Hyde. You shall see there are treasons with a witness : See the very title.

Mr. Lee. [Reads the title of the indictment.] “ A Treatise of the Execution of Justice

Justice: Wherein is clearly proved, That the execution of judgment and justice is as well the people's as the magistrates duty; and if the magistrates pervert judgment, the people are bound by the law of God to execute judgment without them, and upon them."

Ld. Hyde. That you gave to your man to set.

Mr. Lee reads, "It is one of the scarlet sins of this nation, that the people suffered their rulers, &c."—The particular passages are too impious to be published, and indeed too foul to be repeated, but in substance. Those mentioned in the indictment are as follows:

First, The supreme magistrate is made accountable to the people.

Secondly, The people are rebelliously incited to take the menage of the government into their own hands.

Thirdly, They are animated to take up arms, not only against the person of his sacred Majesty, but likewise against the royal family.

Fourthly, They are stirred up to a revolt (in that very term) as an action honourable and conscientious; making publication in the next clause of encouragement to any town, city, or country, in the three nations, to begin the work.

Fifthly, The people are laboured not only to cast off their allegiance to the King, but in direct terms to put his sacred Majesty to death. And to the purposes before mentioned tends the whole scope of the treatise.

Serj. Morton. You may judge of the rest by this: We will not put you to any more expence of time; there hath been sufficient treason in that which you have read.

Ld. Hyde. Now say what you will. But I must tell you, in those particulars that have been compared, there is as much villainy and slander, as is possible for the devil or man to invent: It is to destroy the King in his person; to rob him of the love and

affections of his people; to destroy the whole family, and all government, ecclesiastical and civil. And this read by yourself, owned, and caused to be printed.

Twyn. Except it was that sheet which Mr. L'Estrange read to me when I was taken, I never heard it before, nor read it.

Ld. Hyde. Your man swears that you did set and print part of it: It's impossible to compose and set, but you must read it. Nay, you did examine and correct the sheets; brought them up again. Mr. L'Estrange swears you confessed you read it over; it it was *mettlesome stuff*, Mr. Dickenson says you did not say you read it over; but he saying to you it was impossible you should set it, and not read it, you told him also *it was mettlesome stuff*: You could not judge it to be *mettlesome stuff*, but you must read it. There is Mr. Williamson says that you confessed before Mr. Secretary Bennet that you had seen three sheets, printed off two sheets, corrected those two sheets; and after, printed, and delivered them; and that you had forty shillings in part of payment. Besides this, when Mr. L'Estrange came first, you were up, (nay, at two o'clock in the mornings) when they came and knocked at the door, they heard presses going, you would make no answer till they called a smith, with intent to force it open. When they came in, they found a form, brought out of the printing room, and broken, all but one corner; that taken up by a printer, and compared with the lines of the printed sheets, and found to agree. Some of the were printed on one side only, the rest perfected, you threw them down stairs, part into your neighbour's house; said, you were undone, when you understood Mr. L'Estrange was there. What needed all this, but that you knew what you were doing, and did it purposely to do mischief?

Twyn. I did never read or hear a line of it, but when Mr. L'Estrange read it when I was taken.

Judge

Judge Keeling. Was it printed at your house or no?

Twyn. I know not but that it might: Not that I did it with my own hand.

Judge Keeling. The papers were found wet with you: Who was in your house?

Twyn. My two servants.

Judge Keeling. Did any one set them at work but yourself? Did they work of their own heads?

Twyn. I did use to set them at work; but I did not set them on that particular work.

Ld Hyde. Have you any thing else to say? God forbid but you should be heard; but the jury will not easily believe such denials against so much evidence.

Judge Keeling. Tell us to whom you carried this copy to be corrected?

Twyn. I know not who corrected it.

Ld Hyde. If you have any thing to say, speak it; God forbid but you should have a full hearing: Say what you will.

Twyn. I say I did not read it, nor heard it, till Mr. L'Estrange read it.

Ld Hyde. Have you any thing else?

Twyn. It's possible I may upon consideration.

Ld Hyde. We cannot spend all the day: I must let the jury know they are not to take your testimony.

Serj. Morton. I am of counsel for the King: I shall reply, if he will say no more.

Judge Keeling. You have heard your charge; this is your time to make your answer: If you do not speak now, you must not speak after. Therefore if you have any thing to speak in your justification, or witnesses to call, now is your time.

Ld Hyde. Let me give you this caution: We cannot spend time in vain; we have other business before us, and it grows late. The best counsel I can give you, is this: You said at first, that you desired to be

tried in the presence of God. You are here in the presence of Almighty God, and I would to God you would have so much care of yourself, and do so much right to yourself, to declare the truth, that there may be means of mercy to you. The best you can now do towards amends for this wickedness you have done, is by discovering the author of this villainous book: If not, you must not expect, and indeed God forbid that there should be any mercy towards you.

Twyn. I never knew the author of it, nor who it was, nor whence it came, but as I told you.

Ld Hyde. Then we must not trouble ourselves. Did you never see the hand before, with which this copy was written?

Twyn. No.

Ld Hyde. I am very confident you would not then have been so mad, as to have taken such a copy: A copy fraught with such abominable treasons and lyes; abusing in the first place, the late King that is dead, who was, I'll be bound to say it, as virtuous, religious, pious, merciful, and just a Prince as ever reigned, and was as villainously and barbarously used by his rebellious subjects. Nay, you have not rested here, but have fallen upon this King, who has been gentle and merciful beyond all precedent. Since he came to the crown, he has spared those that had forfeited their lives, and all they had: and he has endeavoured to oblige all the rest of his people by mildness and clemency. And after all this, for you to publish so horrid a book, you can never make amends: God forgive you for it.

Twyn. I never knew what was in it.

Ld Hyde. You of the jury, I will say only this: That in point of law, in the first place, there is no doubt in the world, by the law of the land, the publishing such a book as this is as high a treason as can be committed: by this he has endeavoured to

to take away the life of the King, and destroy the whole family, and so consequently to deliver us up into the hands of foreigners and strangers. It is a great blessing that we have the Royal line amongst us. But, I say, there is no question (and my brothers will declare the same, if you doubt it) that this book is as fully treason by the old statute, as much the compassing and endeavouring the death of the King, as possible: And he rests not there, but he incites the people to rebellion, to dethrone him, to raise war. And the publishing of this book is all one and the same, as if he had raised an army to do this. The proof is, that he set part, printed part, and corrected it; by his own confession, read it over, It was "mettlesome stuff;" confessed how many sheets he printed; the reward and recompence, you took notice of it. And I presume no man among you can doubt but the witnesses have spoken true: And for his answer, you have nothing but his bare denial. And so we shall leave it to you.

Set Simon Dover to the Bar.

Dover. My Lord, I pray time till Monday morning; I have sent away the copy of my indictment.

Ld Hyde. The sessions will be done to-night: Mr. Recorder and the rest are to go away on Monday; and therefore we must end to-night.

Dover. I beseech your Lordship I may have time till night.

Ld Hyde. Men clamour, and say they are hardly used, their trials being put off: Are you content to lie in gaol till the next sessions?

Dover. No, my Lord, I have had enough of that: We are willing now to have it tried.

Ld Hyde. You have had a kindness done to you, that it is not laid treason; and

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therefore go on to your tryal. But because you shall not say you are surprized, if you will not go on now, you must lie in the gaol till the next sessions. We cannot bail you.

Dover. My Lord, the indictment is full of law, and I understand not the formalities of it: I desire but till four o'clock.

Ld Hyde. We must do it before we go to dinner, or not at all; for there is judgment to be given to the gaol, and all of us Judges are commanded by the King to attend him to-night.

Dover. I am not able to plead to it.

Ld Hyde. Then because you shall not say you had not all the right imaginable, we will dispatch the rest of the gaol to-night, and adjourn the sessions till Monday morning, and you shall then have a fair trial, by the help of God. You and your company, Nathan Brooks and Thomas Brewster, are you all desirous to be tried on Monday morning?

All Three. Yes.

Ld Hyde. Because you shall not want advice, or any thing else, you shall have all the liberty you will desire, to send for persons; but you must be prisoners till then.

All Three. We humbly thank you.

Then the jury went out; and after about half an hour's consultation, they returned to the court, and took their places.

Clerk. Are you all agreed of your verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. The foreman.

Clerk. Set John Twyn to the bar: Look upon him, my masters; how say you, is he guilty of the high treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

Clerk of Newgate. Look to him, keeper.

C c c

Clerk.

Clerk. Hearken to your verdict, as the court hath recorded it: You say that John Twyn is guilty of the high treason whereof he stood indicted, and that at the time of committing the said treason, or any time since, he had no goods, chattels, lands nor tenements, to your knowledge; and so you say all?

Jury. Yes.

Clerk. John Twyn, thou hast been arraigned for high treason, and thereunto hast pleaded Not Guilty, and for thy tryal hast put thyself upon God and the country, and the country hath found thee guilty; what canst thou now say for thyself, why the court should not proceed to judgment, and thereupon award execution of death against thee, according to the law?

Twyn. I humbly beg mercy; I am a poor man, and have three small children, I never read a word of it.

Ld Hyde. I'll tell you what you shall do: Ask mercy of them that can give it; that is, of God and the King.

Twyn. I humbly beseech you to intercede with his Majesty for mercy.

Clerk of Newgate. Tie him up, executioner.

Crier. O yes! My Lords the King's Justices command all manner of persons to silence while judgment is giving, upon pain of imprisonment.

Ld Hyde. John Twyn, and John Dunsmore, (one convicted for clipping of money) I am heartily sorry that your carriage and grievous offences should draw me to give that judgment upon you that I must. It is the law pronounces it, God knows it is full sore against my inclination to do it; I will not trouble myself or you with repeating what you have done; but only this in the general, John Twyn, for you: Yours is the most grievous and highest treason, and the most complicated of all wickedness that ever I knew; for you have, as much

as possibly lay in you, so reproached and reviled the King, the dead King, and his posterity, on purpose to endeavour to root them out from off the face of the earth. I speak it from my soul, I think we have the greatest happiness of the world, in enjoying what we do under so gracious and good a King; yet you in the rancour of your heart thus to abuse him! I will be so charitable to think you are misled. There's nothing that pretends to religion, that will avow or justify the killing of Kings, but the jesuit on the one side, and the sectary on the other: indeed it is a desperate and dangerous doctrine, fomented by divers of your temper, and it's high time some be made examples for it. I shall not spend my time in discourse to you, to prepare you for death; I see a grave person whose office it is, and I leave it to him. Do not think of any time here, make your peace with God, which must be done by confession, and by the discovery of those that are guilty of the same crime with you. God have mercy upon you; and if you so do, he will have mercy upon you. But forasmuch as you John Twyn have been indicted of high treason, you have put yourself upon God and the country to try you, and the country have found you guilty: therefore the judgment of the court is, and the court doth award, "That you be led back to the place from whence you came, and from thence to be drawn upon an hurdle to the place of execution; and there you shall be hanged by the neck, and being alive, shall be cut down, and your privy-members shall be cut off, your entrails shall be taken out of your body, and you living, the same to be burnt before your eyes; your head to be cut off, your body to be divided into four quarters, and your head and quarters to be disposed of at the pleasure of the King's Majesty. And the Lord have mercy upon your soul."

Twyn.

Jays. I most humbly beseech your Lordship to remember my condition, and intercede for me.

Hyde. I would not intercede for my own father in this case, if he were alive.

Monday, February 22, 1683-4.

THE court proclaimed.

Clerk. Set Simon Dover, Thomas Brewster, and Nathan Brooks to the bar: Look to your challenges.

The same jury sworn anew.

Clerk. Set Thomas Brewster to the bar, and the rest set by. You of the jury look upon the prisoner; you shall understand that he stands indicted in London by the name of Thomas Brewster, &c. (and here he reads the indictment) for causing to be printed, and selling a book called, "The Speeches, &c." Upon this indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his, &c. Your charge is to inquire whether he be guilty of this sedition and offence, or not guilty. If you find him, &c.

Mr. North. May it please your Lordship, and you gentlemen of the jury, Thomas Brewster stands here indicted of a foul misdemeanour; it is for causing to be printed, publishing and uttering a seditious, scandalous, and malicious book. The indictment sets forth, That he not having, &c. (Here Mr. North opens the indictment) and to this indictment he hath pleaded not guilty. If there be sufficient proof of the charge, you are to find him guilty of the matter contained in it.

Thomas Creek, George Thesher, Thomas Loft, and Peter Bodvel sworn.

Mr. North. Thomas Creek, tell my Lord and the jury what you know con-

cerning Brewster, and your printing of a book called "The Speeches, &c." and his uttering and publishing of it.

Creek. I shall, Sir. There is a mistake in the time, for it was before Christmas, that Mr. Brewster, Mr. Calvert, and Mr. Chapman did come to me at the Cock in Little-Britain; and there they had some copy of the beginning of the speeches of the men that suffered, that were the King's Judges, and they spake to me to print it; and I did print part of the book, I cannot tell you how much, without I had the book, and then I can tell how much I did print. (The book being shewed him) If this be my printing; I suppose it was done afterwards, another impression, and I must not own it in that. (He was shewed one of another impression.) My Lord, thus far I own; the printers that are of the jury will judge (pointing to the page) this is my letter, and here I ended.

Ld. Hyde. What folio is that you ended at?

Creek. You shall see, it is 36.

Mr. North. By whose order did you print that?

Creek. They all gave me orders together, I d. *Hyde.* They all! Name them.

Creek. Mr. Calvert, Brewster, and Chapman.

Mr. North. Did they charge you to do it privately?

Creek. With as much privacy and expedition as I could.

Mr. North. When you had printed them, what did you do with them?

Creek. I disposed of them by their order.

Mr. North. Did you print but one impression, or more?

Creek. Yes, my Lord, I did print part of a second impression.

Mr. North. That we use as evidence; that he had uttered the first, because he went

went upon a second : How many did you print at first ?

Creek. To my best remembrance, the first impression was 3000.

Ld. Hyde. These three employed you to print this book, and you printed to the 36th folio ?

Creek. Yes.

Ld. Hyde. And who printed the other part ?

Creek. I cannot say positively.

Ld. Hyde. These three did afterwards direct you, to give out the sheets to such and such persons, bookbinders, to stitch up, and dispose of ?

Creek. Yes.

Ld. Hyde. The first was three thousand, you say, what number did they take ?

Creek. They had all ; they sent for them of me as fast as I did them.

J. Keeling. Who did you send the proofs to ?

Creek. They were sent for to my house.

J. Keeling. Sometimes by *Calvert*, sometimes his man, sometimes his maid, sometimes by *Brewster*.

Ld. Hyde. Do not you know who began where you left off ?

Creek. I am not able positively to say, I do believe, and I have heard, and spoken with them that said Mr. *Dover* did ; but I cannot positively say it.

Ld. Hyde. You were not by, to see it done ?

Creek. No.

Ld. Hyde. What grounds have you to believe that *Dover* printed the rest ?

Creek. Grounds ! Truly it is so long ago, to swear positively I cannot.

Ld. Hyde. It is, but three years ago.

Creek. To the best of my remembrance, Mr. *Dover* in the time of printing of it did meet me, and converse with me about it ; but to express time or place, I cannot.

Ld. Hyde. Did you and he agree that he should print the other part ?

Creek. No, my Lord, I had nothing to do to agree it with him.

Ld. Hyde. Did he declare to you that he printed the other ?

Creek. To the best of my memory he told me he printed some sheets.

Mr. North. Who changed sheets with you ?

Creek. Some sheets were changed at Mr. *Dover's*.

J. Keeling. Who paid for the printing ?

Creek. Mr. *Brewster* paid me some, and some Mr. *Calvert* paid me.

Ld. Hyde. If you desire to ask him any questions, you may.

Brewster. By and by I shall, my Lord.

Dover. I desire he may tarry till I come to my trial.

Serj. Mortan. Don't doubt it.

Mr. North. George *Thresher*, speak your knowledge to my Lord and the jury, whether *Brewster* did not bring you the book called *The Speeches*, &c. to be stitch'd, and what you did with them, tell the manner of it.

Thresher. May it please you my Lord, and the honourable bench, it is thus : This book it seems was printed, Mr. *Brewster* came to my house to know whether I could fold them, and stitch them in blue paper. That night I went to several printers, Mr. *Dover* was one of them ; we had several sheets from thence, (I did not see them printed) I carried them home, and went about the working them that night.

J. Keeling. How many books were delivered to you ?

Thresher. First and last, about 500.

J. Keeling. Who delivered them to you ?

Thresher. Some were brought to my house.

J. Keeling. By whose directions ?

Thresher. Mr. *Brewster's*.

J. Keeling. Did you deliver them to any body ?

Thresher

Tbrefher. Yes, to Nathan Brooks ready fitch'd.

J. Keeling. Who paid you for them?

Tbrefher. Mr. Brewfter for them he had, and Brooks for them he had.

Mr. North. Thomas Loft tell your knowledge in this bufinefs.

Thomas Loft. May it please you, all that I can fay is this : There was to the number of about or near upon a thoufand, as I take it, folded and fitch'd in my mafter's houfe; one Mr. Perry, I was then his apprentice; they were fent in, as I judge, by Mr. Brewfter's order, but I cannot pofitively fay it; my mafter appointed us to do them; I faw Mr. Brewfter there fometimes, but I cannot pofitively fay that Mr. Brewfter paid for the doing of them.

Mr. North. Did not your mafter prefs the difpatch?

Loft. My mafter did fo; but I know not whether they converfed to that purpofe.

Mr. North. Who fetch'd them away?

Loft. His then apprentice did fetch fome of them from our houfe.

Mr. North. Peter Bodvel, tell my Lord and the jury what you know.

Bodvel. I did carry fome three years ago fome bundles of books from Mr. Creek's houfe, and I think they were the bundles of the fpeeches of the King's Judges.

Ld. Hyde. From whence had you them?

Bodvel. From Mr. Creek's.

Mr. North. What did you do with them? Were they fold?

Bodvel. I did fee fome of them fold in the fhop.

Mr. North. Who fold them?

Bodvel. Myfelf, and my miftrefs fometimes.

Ld. Hyde. Were they brought to the fhop to fell, by his privity?

Bodvel. I do believe he knew of them.

Ld. Hyde. By the oath you have taken, did he fend you for them to the printer's?

Bodvel. He or my miftrefs did.

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Ld. Hyde. Has he been in the fhop when they have been fold?

Bodvel. I cannot truly tell; its three years ago.

J. Tyrrel. To whom did you pay the money that you received for them?

Bodvel. We put it in the box.

J. Keeling. Do not bookfellers keep account what books they fell, and fet the money?

Bodvel. Not for pamphlets.

Mr. North. Did he not fend you to the bookbinder's for them, when they were fitch'd?

Bodvel. It was by his or my miftrefs's order.

J. Keeling. What was your bookbinder's name?

Bodvel. Perry.

J. Keeling. Where was this book kept? publicly, as other books, or in other rooms?

Bodvel. In the fhop, my Lord.

J. Keeling. Were they publicly to view, as other books?

Bodvel. Not fo public as other books, but public enough, Mr. L'Eſtrange knows.

Ld. Hyde. I know you ufe to let your titles of a new book lie open upon your ftalls; did you lay thefe open?

Bodvel. No, my Lord, they did not do fo.

Ld. Hyde. Who was the caufe they did not? Did your mafter direct the privacy?

Bodvel. I think he did, we had fome directions to that end.

Ld. Hyde. Not to lay them open upon the ftall?

Bodvel. No.

Ld. Hyde. Give the jury fome books, and read the indictment; let them be compared.

Clerk reads the indictment: Firſt the title; "The Speeches and Prayers of ſome of the late King's Judges, viz. Major-general Harrifon, Octob. 13. Mr. John Carey, Oct. 15. Mr. Juſtice Cook, Mr. Hugh Peters, Octob. 16. Mr. Thomas Scot, Mr.

D d d

Gregory

Gregory Clement, Col. Adrian Scroope, Col. John Jones, Octob. 17. Col. Daniel Axtell, and Col. Francis Hacker, Octob. 19. 1660. The times of their Deaths, together with several occasional Speeches, and Passages in their imprisonment, till they came to the place of Execution. Faithfully and impartially collected for further satisfaction."

Mr. Cook's letter to a friend, fol. 40. "And so I descend to the cause for which I am in bonds; which is as good as ever it was: And I believe there is not a saint that hath engaged with us, but will wish at the last day that he had sealed to the truth of it with his blood, if thereupon called; for I am satisfied, that it is the most noble and glorious cause that has been agitated for God and Christ since the apostolical times; being for truth, holiness, and righteousness, for our liberties as men, and as Christians for removing all yokes and oppressions." And fol. 41. "It is such a cause, that the martyrs would again come from heaven to suffer for it, if they might: I look upon it as the most high act of justice that our story can parallel, &c."

[Not to trouble the reader with all the particulars mention'd in the indictment; since the rest are but more of the same in other words.]

Ld Hyde. What say you to this book?

Brewster. I desire to ask Mr. Creek a few questions: Mr. Creek, how much of that in the indictment did you print?

Creek. The jury may see if they please.

Ld Hyde. Truly, if he says true, he says he printed no part of that with which you are charged, but the title-page; he left off at folio 36. your charge is the title, and beginning at folio 40.

Brewster. So that you see he printed nothing for me that is in the indictment.

J. Keeling. Did you print the title?

Creek. Yes, my Lord.

Ld Hyde. And you printed the rest, by his, Calvert's, and Chapman's directions.

Creek. They delivered me the copy together to print.

Ld Hyde. If you have any thing to say, speak to the court, the jury will hear you.

Mr. North. Pray, my Lord, give me leave to ask Creek one question: There were two impressions printed, did not you print more in one, than in the other?

Creek. I am upon my oath; to the best of my remembrance I printed the same that I did before, for I had some of it standing, and so I had the same sheets again.

Mr. North. Had you no more?

Creek. No, I had rather less.

Brewster. That's usual, he that prints the first, doth print the same of the second.

Ld Hyde. He says he did so; what have you to say to the charge?

Brewster. I conceive that part that I ordered the printing of, is not included in the indictment.

Ld Hyde. Yes, every part; he says in both impressions he printed to the 36th folio; and all the rest was printed by your direction.

Creek. No, my Lord, I printed to the 36th folio by his direction, the rest was printed elsewhere.

J. Keeling. Your indictment was this; "For causing to be printed this book, called the Prayers, &c. and for selling and uttering of it. For the evidence that you caused it to be printed, he swears, you directed some, and it is not likely you would print half, and let the other half alone; we leave that to the jury, for your uttering that, anon."

Ld Hyde. There are these two particular charges in the indictment, that you must answer: The first is, your causing it to be printed; and it is not essential or of necessity, that every particular that is in the indictment be proved to be done by you; you caused this book to be printed, with such

such a title; that he swears he did for you; then let the jury, or any man living judge whether you did direct the book to be wholly perfected, or by halves. The second charge is, that you uttered them; you deliver'd five hundred of these to be stich'd up, and disposed of them, so that you are in effect both printer and publisher of the whole book.

Brewster. He speaks of one part that I ordered; there is no more proof, and that was but to the 56th page; he speaks also of somebody else that was present with me, and where they had the rest of the copy printed, he tells you he knows not.

Ld Hyde. Have you any more to say?

Brewster. Yes, my Lord; though he says I caused that part to be printed, yet he doth not say I did it maliciously, or with any design against the government.

Ld Hyde. The thing speaks itself.

Brewster. Booksellers do not use to read what they sell.

Ld Hyde. You have forgot what he swore, you brought the proof.

Brewster. He did not swear that: he says Mr. Calvert's man, and sometimes others.

Ld Hyde. Ask him again.

Creek. I did declare, that the proofs were sent for, and carried away and read, sometimes by Mr. Calvert's man, and others, and sometimes by his servants, not by himself; they were wrapt up and sent.

Ld Hyde. For a man to pretend he did not know, when he being master, sends for the proofs by his servant, for any man to suppose this is not the master's act, (say, and directing, it to be done privately) you shall never find a man guilty: they were sold in his shop.

Brewster. The grand part of the indictment lies, That it was done maliciously and seditiously, and then it says knowingly; though it be granted I did do it, and sell it, yet it does not follow that I did it maliciously and seditiously; I did it

in my trade; we do not use to read what we put to print or sell. I say, my Lord, selling of books is our trade, and for the bare exercising of it, knowing nothing of evil in it; it came out in a time too, when there were no licensers, or appointed rules; so that whatever was done we are not accountable for, for we read very seldom more than the title, that some of the jury knows; so that I hope I cannot be said to do it maliciously or knowingly. I can give testimony I am no person given to sedition, but have been ready to appear upon all occasions against it.

Ld Hyde. Have you any more? if you have, say it.

Brewster. My Lord, they are the sayings of dying men, commonly printed without opposition.

Ld Hyde. Never.

Brewster. I can instance in many; the bookseller only minds the getting of a penny: that declares to the world, that as they lived such desperate lives, so, they died; so that it might shew to the world, the justice of their punishment; and so I think it a benefit, far from sedition. It was done so long ago too, it was not done in private, it went commonly up and down the streets, almost as common as a diurnal: it's three years and a quarter ago, or thereabouts.

Justice Tyrer. You speak of your behaviour, have you any testimony here?

Brewster. I do expect some neighbours; Major-General Brown knows me, Captain Sheldon, Captain Colchester, and others: I can give a very good account as to my behaviour ever since.

Ld Hyde. Say what you will, and call your witnesses, and make as much speed as you can.

Justice Keeling. There is another indictment against you, and while that is trying, your neighbours may come.

Brewster.

Brewster. My Lord, I shall defend for the present.

Serj. Morton. May it please your Lordship, and you Gentlemen of the Jury; I am of Council for the King against Thomas Brewster, bookseller, that stands here indicted, for that he, contrary to the duty of his allegiance which he owes to our Sovereign Lord the King, did cause maliciously a seditious and scandalous book to be printed, wherein there are divers scandalous clauses contained, that are in disparagement of the King's royal prerogative, and against his government, crown and dignity; and likewise that he hath sold and uttered the same books in contempt of his Majesty's laws. This is the effect of the indictment: It has been proved to you by four witnesses, that for which he stands indicted; First, That he did cause part of the book to be printed; that's clearly proved by Creek: likewise, that he has sold and uttered those books in his shop; nay, he confesses that he did, and says they were sold openly as a diurnal; and therefore he thinks it was lawful for him to do it. He has gone about to make a defence of this his seditious behaviour; he tells you he did not print all the book; it is not said, that he printed such and such a letter of the book, but that he caused such a book to be printed: and it is to be presumed, if he caused one part, he would cause the other, or otherwise it would be a book of maimed sense and imperfect. Gentlemen, for the uttering and selling of them, that himself confesses: you have heard the excuses he hath made, whether you will not find him guilty of this crime, that I must leave to you, and to the direction of the court.

Ld Hyde. You of the Jury, you see the indictment is for causing a libellous and seditious book to be printed, under such a title, that is, "The Speeches and Prayers, &c." it is for causing this, seditiously, factiously and wickedly to be printed; and

for selling and publishing it abroad to the King's people. For the matter of evidence, you have heard it; I will not repeat the particulars to you, only something to what he has said, that you may not be misled. First, He says, it does not appear, that he did it maliciously or knowingly; there are some things that you that are of the Jury are not to expect evidence for, which it is impossible to know but by the Act itself. Malice is conceived in the heart, no man knows it unless he declares it: As in murder, I have malice to a man, no man knows it; I meet this man and kill him; the law calls this "Malice." If a man speak scandalous words against a man in his calling or trade, he lays his action, "Malice," though he cannot prove it but by the words themselves. If I say a Printer or Stationer is an ignorant person, has no skill in his trade, I would not have any man to deal with him, he understands not how to set letters, or the like; here is nothing of malice at all appears, yet if you bring your action, you must lay it, "maliciously;" it is the destroying your trade, and you will have damages. I instance in this particular, that you may see there is "Malice" supposed to a particular private person in that slander, much more to the "King" and the "State." The thing itself, in causing a book to be printed that is so full of scandals and lyes, to inveigle, misguide, and deceive the people, this is, in construction of the law, "Malice;" and though no malice appear further. The next is this; "factiously, seditiously, knowingly;" this carries "Sedition" as well as "Malice." Such a barbarous transcendent wretch that murdered his Prince; without the least colour of justice, to declare that "he rejoiced in his bonds;" and that "the martyrs would willingly come from heaven to suffer for it." Horrid Blasphemy! "All the saints that engaged in it, to wish that they had sealed it with their

their blood!" What can you have more to encourage and incite the people to the killing of Kings, and murdering their lawful Prince! This they publish, and say it was spoken publicly; let it be upon his own soul that did it: for in case he did it, no man knew it but those that heard it. But to publish it all over England, (3000 of the first impression, and a second;) this is to fill all the King's subjects with the justification of that horrid murder: I will be bold to say, "not so horrid a villainy has been done upon the face of the earth, since the crucifying of our Saviour." To print and publish this, is "Sedition." The next thing is your trade. I have a calling to use, and I may justify the using of it, so long as I use it lawfully; but that must not justify me in all manner of wickedness against the King and State. As if a lawyer (I will put it in my own coat) pleads a man's cause, and against the King; this is justifiable, he ought to plead for his client, but he must plead as becomes him. If a lawyer in defence of his client will speak sedition, do you think he is free from being punished? So of a Printer; if a Printer prints seditious and factious books, he must look to himself; that's no part of his calling to poison the King's people: so though printing of a book be lawful, he must use it as the law appoints him, and not to incite the people to faction... Writing of letters, you know it is common and lawful; but if I write treasonable letters, give notice to rise, do such and such unlawful Acts, I am to be punished for these letters. A Printer he is a publick agent, he is to do what he is able to answer, or else he must take what follows. He says, There was no Act against him: it is true, you see he is not indicted upon the Statute, but at the common law, for an offence in the nature of a libel. If I were a Printer, and would compile a pamphlet against a man, though not in authority, and disparage

him, this is the publishing of a Libel, and an offence for which he ought to be indicted, and punished by the common law; and he that prints the Libel against me, as a publick person, or against me as Sir Robert Hyde; that Printer, and he that sets him at work, must answer it; much more when against the King and the State. Another thing is this; he talks to you of "dying mens words:" if men will be so vile to be as wicked at their deaths, as they had been in their lives; put the case of that man on Saturday convicted for printing a horrible villainous thing, if he will be so unchristian to himself, as to justify this at his death, or to speak as bad as he had caused to be printed, is that a justification to publish them, because they are the words of a dying man? God forbid. A robber declares at the gallows, it is for a noble cause, for taking a purse upon the high-way, that it is an unjust law to condemn to death for such crimes. Shall any man publish this in print, and not be liable to be punished for it? If any that were tried here upon Saturday, shall villify the Lord Mayor, or any of the Bench, traduce them for doing of justice, shall this go unpunished, if a man take it up and print it? This I speak to let you see this is without colour of law: He pretended he did it not knowingly; I will not repeat the evidence; "He sent for them, had them stitched, caused them to be kept privately," (not upon the stall.) And observe, he tells you it was done "long ago:" it is but three years ago that they were as publickly sold as "Diurnals," he says. I shall repeat no more, I know you are men of understanding, and of obedience to your King; it is high time to take notice of this dispersing of pamphlets; if therefore you do believe that he did cause it to be printed, or published it, or both, he is guilty of the misdemeanour laid in the indictment; (and "he hath a great

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kindness in that it is not made capital:”) If you do believe that he did either cause it to be printed or published, that’s enough to find him guilty of this Indictment.

Clerk. Harken to the other Indictment: He stands indicted in “London, &c.” and this for causing to be printed a certain book called, “The Phoenix, &c.” publishing the same, [the Indictment was wholly read.] To this Indictment he hath pleaded, Not Guilty; so your issue is to enquire whether he be guilty of this offence, or not guilty.

Mr. North. [opened the indictment in manner as before.] To this he hath pleaded Not Guilty; if the charge of the indictment be sufficiently proved, you are to find him guilty.

Serj. Morton. May it please your Lordship, and you gentlemen of the jury, here is another bill of indictment preferred against Thomas Brewster; it is, that contrary to the duty of his allegiance to his sovereign Lord the King, and purposely to incite the people to sedition, and to withdraw them from their natural allegiance to the King, he hath caused to be imprinted maliciously, falsely and scandalously, a certain scandalous book, entitled, “The Phoenix, &c.” And this he hath done to disturb the peace of the kingdom, and to withdraw the people from their allegiance; and to the scandal of his Majesty’s government, he hath caused this book to be printed, uttered and sold: and this we take to be a great offence against the King, and his crown and dignity. Gentlemen, the dispersing of seditious books is of great danger to the kingdom; false rumours, they are the main incentives that stir up the people to sedition and rebellion, that raise discontentments among the people, and then presently they are up in arms. Dispersing seditious books is very near a-kin to raising of tumults; they are as like as brother and sister: Raising of tumults is the more maf-

culine; and printing and dispersing seditious books, is the feminine part of every rebellion. But we shall produce our witnesses, we shall prove that this Thomas Brewster caused this book to be printed; that when it was printed he did receive three hundred; that these he caused to be stitched up; that he uttered and sold them, part in his own shop, and part elsewhere. It being an offence of that great and dangerous consequence, which tends to the disturbance of the peace of the kingdom, I hope you will take it into your serious consideration, and if the matter stand proved against him, you will give him his due demerit.

Creek, Thresher, Loft and Bodvel, sworn again.

Mr. North. *Creek*, tell my Lord and the jury what you know of the printing of the book called, “The Phoenix.”

Creek. My Lord, it was in May that *Mr. Calvert, Brewster and Chapman* brought that book to me to print.

Ld Ch. Just. Hyde. What book? name it.

Creek. The Phoenix, &c. it was printed for them three. All that I can say, is, That *Mr. Brewster’s* part was delivered to me by his direction.

Ld Ch. Just. Hyde. Who paid you for printing of it?

Creek. *Mr. Brewster* paid for his part.

Justice Keeling. How many was his part?

Creek. His part of 2000, that was 600 and odd.

Ld Ch. Just. Hyde. These three men joined to bear each man his share?

Creek. Yes, every man was to have his share.

Justice Keeling. Did he wish you to do it with privacy?

Creek. Yes, with expedition and privacy.

Brewster. Was the copy written or printed?

Creek.

Creek. It was all printed formerly, some in quarto, some in octavo, and might have been bought single in any place almost.

Ld Ch. Just. Hyde. What do you mean by all printed formerly?

Creek. My Lord, they were in several parcels printed; there was Mr. Calamy's sermon, and Mr. Douglas's sermon, and the rest.

Justice Keeling. How long ago was it since they were brought to you to print?

Creek. It was in May, three years.

Brewster. Did I order you how you should print them, or Mr. Calvert? Did not you hear him say, that he had staid two hours for me at an alehouse to be his partner?

Creek. I did hear him say so.

Justice Keeling. What made you so loth to be their partner? were they two hours persuading of you?

Creek. No, they waited two hours for him to be their partner.

Serj. Morton. Thresher, did Brewster deliver any of those books to you to stitch up?

Thresher. Yes, and please you my Lord, and I had them by Mr. Brewster's order to fold.

Serj. Morton. How many?

Thresher. To the number of two or three hundred.

Mr. North. Did he not enjoin you privacy?

Thresher. Yes, I think he did.

Justice Keeling. When they were bound, had you a note to deliver those books safely to any?

Thresher. Yes, from his own hand; he desired me to go and give them to such and such persons, booksellers. Said I, I shall hardly remember them; he thereupon gave me a note of their names to whom I should deliver them; I judge they were to be trusted more than others.

Serj. Morton. Did you deliver them accordingly?

Thresher. Yes, I did.

Ld Ch. Just. Hyde. How many did you deliver in that manner?

Thresher. Two dozen and more.

Justice Keeling. If you will ask him any questions, do.

Brewster. Did I give you any order to deliver them to any particular booksellers?

Thresher. Yes, you did; I believe Mr. L'Estrange and Mr. Williams (one of the jury) can remember I shewed them the paper you wrote to that purpose.

Mr. Williams. I did see the note.

Brewster. I do not remember I gave you any order, they were all common things before.

Justice Keeling. You may ask him what questions you will.

Brewster. I shall ask him no more.

Mr. North. Peter Bodvel, speak what you know concerning the selling or uttering the book called, The Phoenix, &c.

Bodvel. I never knew of the printing of them, I never knew my master sell any of them, nor heard him give order for selling of them.

Justice Keeling. Did you sell any of them for him?

Bodvel. I think I did sell some.

Serj. Morton. Were they in the shop to be sold?

Bodvel. Yes, they were.

Ld Ch. Just. Hyde. Were they in the shop publicly, with the title-page lying open upon the stall, as others books do, when they are newly out?

Bodvel. We seldom did so with bound books.

Justice Keeling. Where were the books found when they were seized?

Bodvel. I think they were in some of the upper rooms.

Justice Keeling. Where were they found, by the oath you have taken?

Bodvel.

Bodvel. That Mr. L'Estrange can tell better than I, I did not see him find any of them.

Ld Ch. Just. Hyde. By the oath you have taken, where was the place whence you were to fetch them, when you were to sell them?

Bodvel. In the hall, the room over the shop.

Ld Ch. Just. Hyde. Were they put up privately?

Bodvel. They were so.

Justice Keeling. What private place was that?

Bodvel. It was a hole in the wall.

Justice Tirrel. By whose direction were they laid there?

Bodvel. I know not whether by his, or my mistress's.

Justice Keeling. Were not some found under the bed?

Bodvel. I heard that Mr. L'Estrange found some of the titles under the bed.

Serj. Morton. I think it is enough; what say you to it, friend?

Ld Ch. Just. Hyde. Observe this, and answer it: It appears that you and two more (Calvert and Chapman) did agree with Creek for printing this book, (several parcels drawn into one volume) and you were to bear each of you a third part, and to have a third part of the books; he twears you did both pay your part, and had your part of the books: These books were printed before, and so they were common enough, and therefore you must needs know what was in them. The third full part was brought to you, and delivered by your appointment; you gave a note how they should be disposed of, and you owned them not in public: (your own soul told you they were not to be justified) two dozen were delivered privately to particular persons, by your direction. Lay these things together, and now answer them: For the

indictment is, That "you caused such a book to be printed and published."

Brewster. In the first place, the evidence does say, That Mr. Calvert did acknowledge when he gave him the copy to print, that he staid so long for me, in order to be their partner, he that was the collector of it together. They were all printed before, and printed by licence; for the books, I never read them: we seldom read the books we sell, being they were before printed, and with licence sold single, (as the gentlemen of the jury know) I thought there was no crime to print them altogether. It was done in an interval when there were no licensers, we knew not where to go: what has been printed formerly, we took it for granted it might be reprinted, till this late act for printing; and this was done before this act.

Justice Keeling. Have you any more to say?

Brewster. No, my Lord, I shall leave it to the jury. But, my Lord, here are now some neighbours to testify that I am no such person as the indictment sets forth, that I did maliciously and seditiously do such and such things.

Ld Ch. Just. Hyde. We will hear them, though I'll tell you it will not much matter; the law says it is malice.

Capt. Sheldon sworn. My Lord, all that I can say is, he was ready at beat of drum upon all occasions; what he has been guilty of by printing or otherwise, I am a stranger to that; I know he was of civil behaviour and deportment amongst his neighbours.

Justice Keeling. It is very ill that the King hath such trained-soldiers in the band.

Capt. Hanson and others, offered to like purpose.

Ld Ch. Just. Hyde. If you have a thousand to this purpose only, what signifies it?

Justice

Justice Keeling. Are you his captain?

Capt. Sheldon. No, my Lord, *Capt. Bradshaw.*

Ld Ch. Just. Hyde. He should be cashiered the band; not but that he should be charged with arms. I'll tell you, do not mistake yourself, the testimony of your civil behaviour, going to church, appearing in the train'd-bands, going to Paul's, being there at common-service, this is well: but you are not charged for this; a man may do all this, and yet be a naughty man in printing abusive books, to the misleading of the King's subjects. If you have any thing to say as to that, I shall be glad to find you innocent.

Brewster. I have no more to say.

Ld Hyde. Then you of the jury, there are some things in this indictment (as in the other) necessary to be stated to you; my brothers and I have consulted here about it: the indictment is for causing a factious and seditious book, called, "The Phoenix, &c." with divers other things therein, to be printed. But, pray let them see the book, and compare it with the indictment.

Clerk. (Reads the indictment, and first the title.) "The Phoenix, or the Solemn League and Covenant." (Edinburgh, Printed in the year of Covenant-Breaking.) "A King abusing his power, to the overthrow of religion, laws, and liberties, which are the very fundamentals of this contract and covenant, may be controuled and opposed. And if he set himself to overthrow all these by arms, then they who have power, as the estates of a land, may, and ought to resist by arms; because he doth by that opposition break the very bonds, and overthrow the essentials of this contract and covenant. This may serve to justify the proceedings of this kingdom against the late King, who in a hostile way set himself to overthrow religion, parliaments, laws, and liberties." (The rest is

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much at the same rate, only now and then a spice of blasphemy, for the credit of the holy league: A greater sin (is the breach of that Scotch Covenant, according to our author, page 158.) than a sin against a commandment, or against an ordinance, &c.)

Ld Ch. Just. Hyde. You of the jury, you see the indictment agrees with the book. There's a great deal of mercy that this man hath not been indicted of treason; for those very particulars you have heard are as high treason as can be. First, he doth declare, "That the King abusing his power, the people may resist, and take up arms against him:" That's express treason, without any more ado. Then he tells you what a horrid thing it is to break that solemn league and covenant; justifies the raising of arms and rebellion against the late King, unthroning and murdering of him. I tell you that solemn league and covenant was a most wicked and ungodly thing, against the law of God, and the law of the land. To have such villainous stuff to be published, it is a great mercy of the King it had not been drawn higher. You see the man is so far from acknowledging any guilt, that he justifies the fact.

Brewster. No, my Lord, I do not justify myself.

Ld Ch. Just. Hyde. Yes, you do. The printer swears he was he was to go share and share like: he had his part; he publishes them to some particular friends: I say he justifies this. He tells you in his defence, That it was commonly printed; that it was done by printed copy, and that done formerly by licence; and when things are printed by licence, they do not expect or need any new or second licence; They were commonly sold asunder; here they are only printed together. That he says is nothing. What is this but justifying the printing of it? Observe, weigh, and see what kind of defence here is. The

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title

title, what is it? "The Phoenix, or Solemn League and Covenant." You all know it, and rue it. When was it printed? It was when the wicked rebels here could not seduce sufficient numbers of the King's subjects to support their rebellion; and then they invite their dear brethren (as they call them) the Scots to unite with them. The Scots were cunning; they would not do it till they had entered into a covenant, in a league; and then they consent to unite with the rebels here. This league and covenant was indeed in defence of the King; but how long? So long as he defended them, (the Presbytery and Scotch discipline.) When they had got this good King into their hands, they put what terms upon him they pleased; and then were these seditious sermons printed. Douglass's was printed in Scotland; was it licensed here? No, it was done there and brought hither. Then for the other sermon, by what licence was that printed? Observer the time when it was printed; *was it not to set forward rebellion, to set up the Scotch Presbytery*; and this in forty-five, when they were in arms against the King, after the King put himself upon his defence, and was at Oxford? Do you tell me of the licence of rebels then for your justification? Now, when the King is so happily returned, now to publish these things a-fresh to the people, that they might do the same again! And I tell you once again, it is mercy in the King that he was not indicted for treason. I shall leave it to you, you have had it fully proved.

Clerk. Set Simon Dover to the bar. (And here the indictment is read.)

Mr. North. Opens this indictment as the rest.

Serj. Morton. We have but two witnesses, and they will prove the matter clearly. There were two impressions of

this book; we will prove he had a share in both of them.

Creek sworn again.

Creek. I delivered before what I can say.

Judge Keeling. Look you, you must deliver all that evidence over again, because it concerns another person.

Creek. I did say, and say still, That to the best of my memory. Mr. Dover did print part of that book, and that he and I did converse about it in the time it was doing; but I cannot swear it positively, because I cannot remember the time when, or the place where.

Judge Keeling. Did you change sheets with him?

Creek. With him, I cannot say; but some sheets were changed by our men.

Serj. Morton. You say you think you had some discourse with him: Did not you speak about the danger of printing it?

Creek. We talked of making an end of it.

Serj. Morton. Can you remember to what letter you printed?

Creek. I have shewed the gentlemen of the jury.

Judge Keeling. Had you no discourse of the danger of it?

Creek. I thought it would not come to any thing: I did tell Sir R. Brown, (then Lord Mayor) That if they hanged twenty more, I thought I should print their speeches.

Judge Keeling. You knew the contents of the book?

Creek. Yes, I did.

Judge Keeling. Such men as you, the King and the government hath a great interest in your trade: That you should think it lawful to print what a man says when he dies, and to scatter it abroad, though never

so bad, it's a great offence: I would not have it pass for so clear a thing!

Ld Ch. Just. *Hyde*. If you are of such principles, to print what you list, you are not fit to live in a civil place; for a printer or bookseller to print any thing one against the other, is actionable. Do you think the press is open to print what you list?

Creek. I did so then.

Ld Ch. Just. *Hyde*. I'll deal plainly with you: For this book, if you had had your due, you ought both to have been drawn, hanged, and quartered. When did you give Mr. L'Estrange information of this matter?

Creek. Lately, when I was a prisoner in Ludgate.

Mr. *Royson*. (One of the jury.) I desire to ask him one question: Whether Mr. Creek saw this book a printing at Mr. Dover's house, or no?

Creek. No; I did not.

Serj. *Morton*. They changed sheets.

Thresher sworn.

Thresher. This is all that I have to say: That the first night that Mr. Brewster sent for me to stitch these books, it was very late before we could get them: I went that night to Mr. Dover's, and had some of the sheets; the rest at Mr. Creek's. I did not see him print any of them.

Serj. *Morton*. What quantity was there of them?

Thresher. I suppose there were two or three hundred sheets.

Mr. *North*. Were they not of this book?

Thresher. Yes, of the speeches.

Mr. *North*. Where were they delivered?

Thresher. In the lower room: I suppose some of them were hanging upon lines before I had them.

Ld Ch. Just. *Hyde*. What say you to it?

Dover. I desire to ask him some questions. I do say I never saw the man

before: I would ask whether ever he saw me before in his life?

Thresher. Not before that: I was never in his house but that night. By this token I saw you, and you me; when I came for the sheets, you asked Mr. Brewster whether he and Mr. Calvert were agreed, or else you would not deliver the sheets.

Dover. I desire to know what time and place: I am charged in the indictment on a day and place.

Ld Ch. Just. *Hyde*. That's not very material.

Dover. He fixes nothing on me.

Ld Ch. Just. *Hyde*. That the jury can best tell: Have you any more questions?

Dover. No, my Lord.

(The indictment and books were compared.)

Dover. My Lord, there is no person swears that I printed it, or part of it: Nothing fixed upon me.

Ld Ch. Just. *Hyde*. The first man swears that you set it to printing.

Creek. I do not swear it positively; I never saw him print a sheet: It was the report of the town that he did it.

Ld Ch. Just. *Hyde*. You printed it: For whom?

Creek. For Brewster, Calvert, and Chapman.

Ld Ch. Just. *Hyde*. But you say that you and he did converse about it when it was printing.

Creek. I did say, to the best of my memory we did.

Ld Ch. Just. *Hyde*. By the oath you have taken, who did you change sheets with?

Creek. I cannot say I did change any with him: I say that some sheets were changed by my men, and they told me they had them of his men.

Dover. Who are those men that changed the sheets? Which of my men are they?

Justice:

Justice *Keeling*. Look you, Dover, you are indicted for causing to be printed this wicked book, and for publishing and vending of it. You are a printer by your trade, as well as this man that comes against you: He says he did not see you print it; but he took it, and believed that you printed it. I tell you how far that weighs: You are a printer by trade; and comes the other, and desires the sheets; you would not deliver them unless Mr. Brewster and Mr. Calvert were agreed. How come the sheets to your house, being a printer, and yet you not print it? Answer that.

Dover. I shall, my Lord: It is no consequence at all. Admit I had these sheets, it is no consequence at all that I printed them; for printers and booksellers usually have books they did not print themselves.

Ld Ch. Just. *Hyde*. Thresher, by the oath that you have taken, did you see those sheets hang upon the line in his house?

Thresher. My Lord, I judged these had lately hung up: And I saw other sheets hanging there; and I knew nothing to the contrary but those that hung upon the line were the same with these.

Ld Ch. Just. *Hyde*. Here are sheets upon the lines; you delivered him to fold part of those on the lines: What would you have more plain? you would not deliver them, if they were not agreed; then they were agreed, and you delivered them.

Dover. I say this; I look upon the witness to be altogether invalid: He is a person of no good repute.

Ld Ch. Just. *Hyde*. A better man than you, for ought appears: You are indicted for a foul offence, so is not he.

Dover. I am not the man you take me to be.

Ld Ch. Just. *Hyde*. You shall have evidence, if you will, that you are at work at this time upon as bad as this.

Dover. If it be a crime, I am sorry for it.

Mr. L'Estrange sworn.

Mr. L'Estrange. Shall I speak to the whole matter, or only to the particular you last mentioned?

Ld Ch. Just. *Hyde*. Say your knowledge.

Mr. L'Estrange. When I came to his house, which was about the middle of October, to search, I found at that present, a little unlicensed quacking book; and in his pocket the libel that was thrown up and down the town, called, "Murder will out," ready printed.

Ld Ch. Just. *Hyde*. Which was a villainous thing, and scattered at York.

Mr. L'Estrange. Since that, I was at his house, to compare a flower which I found in the Panther, (a dangerous pamphlet;) that flower, that is, the very same border, I found in his house; the same mixture of letter, great and small, in the same case; and I took a copy off the press. I found over and above this letter, (producing the letter) dated the 7th of February 1663. and directed, "For my dear and loving wife," J. Dover. Is it your Lordship's pleasure I shall read it all?

Ld Ch. Just. *Hyde*. If it be touching the printing of things you found, do.

Mr. L'Estrange. (Reads it.) "I would fain see my sister Mary; therefore, since sister Hobbs will not come, take her order, and instead of her name, put in sister Mary's; it will never be questioned here. However, do it as wisely and handsomely as you can," &c: (And then in a postscript,) "You must either get Tom Porter, or some very trusty friend, (possibly C. D. may help you) to get for you a safe and convenient room to dry books in, as soon as possibly you can." (And again:) "Let me know what you intend to do with the two sheets and half; I will have it published, when I am certain I shall be tried."

Ld

Ld Ch. Just. *Hyde*. Let the jury see now, whether you are the man you would be thought.

Dover. I desire to know whether my name be to that letter?

Mr. *L'Estrange*. No, it is not.

Ld Ch. Just. *Hyde*. Where did you receive or find this letter?

Mr. *L'Estrange*. My Lord, I found it about his wife.

Ld Ch. Just. *Hyde*. Let the jury judge if this come from you, or no.

Judge *Keeling*. You of the jury, you must understand this, That what is said now, is only upon his reputation, not to the point in question at all: That matter rests upon its own bottom.

Ld Ch. Just. *Hyde*. I'll deal plainly with you: Had he not stood upon such terms, I should not have spoke of this: But when a man will be thus bold and confident, I thought it proper, to let you see how he continues now in the goal.

Dover. I do not vindicate myself in it; but I speak against the witness: I do conceive that the witness does not fix any thing upon me.

Ld Ch. Just. *Hyde*. Have you any thing else to say to the indictment?

Dover. I am indicted as a malicious and factious man: The witnesses say no such thing.

Ld Ch. Just. *Hyde*. You are not indicted so, but that you have maliciously and factiously caused to be printed such a seditious book; not your person, but the action.

Dover. There is nothing of that proved: Admit I was guilty of it, it was done when there was no act or law in being touching printing. The witnesses do not swear positively that I did do it: One says he did not see me; the other that he only believed it; that he did see some sheets upon the line, and they were the same for ought he knew; does not remember the time or place of our discourse: I do not know that ever I

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had half an hour's discourse with him in my life; I never had any meeting with him about any such matter, nor had any converse with him. The title of the book says, "Faithfully and Impartially collected for further Satisfaction;" so that it cannot be interpreted maliciously. It's a maxim in law, That "the best interpretations are to be put upon the words of the indictment, in favour of the prisoner at the bar:" And I hope this honourable bench and the jury will mind that. I am a printer by trade; what I did was for my livelihood; the scripture says, "He is worse than an infidel that takes not care for his family." I speak not this to justify any thing against his Majesty or his government. Through my ignorance I may possibly transgress: If I have done any such thing, I am sorry for it; I hope I shall be more careful for the future. The other part of the indictment is for selling of them: No man swears that I sold one book of them. Mr. Creek says, That some of his men told him that he had some of those sheets from some of my folks; but of whom he does not say. That I did meddle with them knowing them to be scandalous, I hope there is nothing proved of that nature; there being then no law, I humbly hope there was no transgression.

Ld Ch. Just. *Hyde*. Have you done?

Dover. I humbly desire your Honours, and this jury, to take notice of what I have said.

Ld Ch. Just. *Hyde*. You of the jury, I will not spend time (it is too late) in repeating the evidence: You have heard the evidence particularly, and his answer. He doth in part make the same answer with his fellows, which was, That it is his trade. It's true, no doubt but he ought to maintain his wife and family by his lawful calling; but if a thief should tell you that he maintained his wife by stealing, is that lawful? printing books lawfully, no man will call him to account for it; but if he prints

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that

that that is abusive to the King and his government, that's no part of his trade, and his trade will not bear him out in it; he is charged for printing and publishing of these scandalous books. That he did it knowingly, maliciously, falsely, factiously, and seditiously. I told you, that although all these things be not proved, yet if he did it, the law calls it malice, faction, and sedition. Consider the circumstances; you see it is done in the dark; the sheets delivered at his house, and discourse about delivery of them; he would not deliver them unless Brewster and Calvert were agreed. I leave the evidence to you in this case: Pregnant, strong, undeniable circumstances are good evidence. Though a man doth not come and tell you he declared to him he knew what was contained in this book, yet if there be sufficient evidence to satisfy you in your consciences that he knew what was in it, and was privy to the printing and publishing of it, there's enough for you to find the indictment. You are to weigh circumstances as well as pregnant full proof in cases of this nature.

Clerk. Set Nathan Brooks to the bar. You of the jury, you shall understand that stands indicted, &c. Reads the indictment.

Mr. North afterwards opened the indictment.

Serj. Morton. This man, we shall only prove him guilty of stitching and dispersing the said books.

Thresher sworn.

Thresher. This man I have not seen these three years.

Serj. Morton. Did he set you to work in stitching these books?

Thresher. He brought none to me, that I can remember: But by Mr. Brewster's order I delivered about two hundred, or thereabouts, and carried them to his house in St. Martins, and he took them at the

stair-foot, and paid me for stitching of them in blue paper.

Serj. Morton. Who furnished you with blue paper?

Thresher. I went by Mr. Brewster's order to a Stationer in Bread-street, and received some.

Brooks. I desire to know whether in those books he said he delivered me, there were those passages in the indictment?

Thresher. I know not: They were the Speeches and Prayers that I delivered you.

Brooks. How did you deliver them to me?

Thresher. They were stitch'd; and I tied them up with a piece of pack-thread, and carried them to him: He received them himself, and came afterwards to an alehouse, and gave me a flaggon of beer. He knew what they were; for some being imperfect, he said Mr. Brewster must make them good; and Mr. Brewster gave order, if he came for them, they should be delivered him.

Brooks. Did you know there were those passages in them?

Thresher. No, not I.

Brooks. I knew only the title of it.

Ld. Ch. Just. Hyde. Let there be what there will in it, if you knew the title, look you to it. Have you any thing else to ask?

Brooks. No, my Lord.

Henry Mortlock sworn.

Serj. Morton. Mr. Mortlock, how many of those books did you receive of this Nathan Brooks?

Mortlock. About forty or fifty.

Serj. Morton. What talk had you about receiving them?

Mortlock. I do not remember any discourse.

Serj. Morton. Where did you receive them?

Mortlock. I am not certain whether in my shop, or no.

Ld

Ld Ch. Just. *Hyde*. Were they open?

Mortlock. They were tied up.

Ld Ch. Just. *Hyde*. Did you speak for them?

Mortlock. I cannot tell, he brought them to me.

Ld Ch. Just. *Hyde*. How came he to bring them to you?

Mortlock. May be I might speak for them; I paid him for them.

Ld Ch. Just. *Hyde*. You and he knew what book it was?

Mortlock. I think we did.

Ld Ch. Just. *Hyde*. Did you not open them? They might have been the Devil of Edmonton, for ought you knew. Did you open them afterward? And did they appear to be this book?

Mortlock. Yes.

Mr. L'Estrange sworn.

Mr. L'Estrange. I came to the house of Nathan Brooks about October last, and knocking at the door, they made a difficulty to let me in; at last, seeing not how to avoid it, Brooks opened the door. I asked him, what he was? he told me he was the master of the house. By and by comes one that lodged in the house, and throws down this book (shewing the book) in the kitchen, with this expression, "I'll not be hang'd, (says he) for ne'er a rogue of you all: Do you hide your books in my chamber?" This book had the speeches in it, with other schismatical treatises. After this I searched the next house; and there I found more difficulty to get in. But after a long stay, I saw the second floor in a blaze; and then with a Smith's sledge I endeavoured to force the door; at length the fire was put out, and one comes down and opens the door. I went in, and up stairs, where I found about two hundred of the Prelatick Preachers, and certain notes of Nathan Brooks, wherein he mentions the

delivery of several of these Speeches, and other seditious pamphlets. There is one particular, wherein he records, That Thomas Brewster, did in the presence of Captain Hanson, undertake to bear his charges of imprisonment; this Nathan Brooks having been formerly imprisoned for a crime, wherein Brewster was to bear him out.

Ld Ch. Just. *Hyde*. What was it that burnt above?

Mr. L'Estrange. My Lord, they had burnt, I suppose, some of the Prelatick Preachers, (a desperate book :) I found one bundle untied, and I suppose, (as the man told me after) that it was a part of that which was burnt.

Ld Ch. Just. *Hyde*. You say this was in the next house to Brooks; what had Brooks to do there? Had he conveyed those books thither?

Mr. L'Estrange. The owner of the house said he knew nothing of them; but a man and his wife, lodging in the chamber where the fire was, said, That Nathan Brooks had delivered with his own hands to them those parcel of books that were there found.

Ld Ch. Just. *Hyde*. You hear what he says, That one of your guests came down, said "he would not be hanged for ne'er a rogue of you all; throws down the book—

Brooks. What's that to me, if a man have a book in his house, and throw it down, and say so, doth that concern me? He did not bring it out of my chamber.

One Mercer sworn.

Mercer. My Lord, [having the book in hand] this is the book that I did find in a room, brought up by Nathan Brooks; and I brought it down: I had it in a room where two boys and my sister lay. He came first, and knocked at our chamber-door: Said I, who is there? Says he, a friend. Who are you? Brooks your landlord, says he: Pray

Pray open the door, and lay up this book for me. No, said I, if you were my father or brother, I will not receive it; I will not meddle or make with you. After I had denied the book, he flings it into the next room.

Ld Ch. Just. *Hyde*. How came you by the book?

Mercer. After Mr. L'Estrange had enquired there for books, I knew nothing; but my wife called to my sister, and asked her if she heard Mr. Brooks in the room? She said, Yes, and he had left a book with her. Having notice, I went up stairs, took the book, and brought it down presently.

Brooks. Is that the book, the very individual book, that I brought up there?

Ld Ch. Just. *Hyde*. He swears this, That you knocked, and prayed him to take in a book; he refused it: You went up to the next chamber, and there you left it. And his wife asking afterwards if you had been there, his sister said, Yes, you had left a book. He brought it down; and this appears to be the very individual book, nothing can be more clear.

Mercer's Wife sworn.

That morning they knocked at Brooks's door, we were a-bed; I heard a noise of thieves. Upon that, I being awake, and my husband asleep, I awaked him, and desired him to go to the window. He asked who was there? One said to him, Rise, and open the door. Said my husband, I am but a lodger; let my landlord open it, if he will. Who is your landlord? Mr. Brooks. That's the man I look for, says the other. So with that, after some time, Mr. Brooks went down, and opened the door. Mr. L'Estrange coming up to my husband, says he, Are you sure there is nothing in your rooms? There is nothing, said he. When my husband went down, I called to my sister: Said I, did you hear Mr. Brooks

there? Yes, said she, he has left a book here. Said I, Do you know what's in it? It may bring us all into trouble. And my husband having confidently denied any such thing, fearing he might be troubled, I called him up, and told him of it. Said my husband, I'll call up the gentleman, and give it him. No, said I, go take the book, and carry it him.

Mercer's sister sworn.

Thomazin *Mercer*. It is very true that that is the very book I received from Mr. Brooks,

Ld Ch. Just. *Hyde*. Now the individual book is brought to light.

Brooks. What was the title of it?

T. *Mercer*. I know not: but there were the Speeches of the ten men that were executed.

Brooks. Did you see that book, that very book?

T. *Mercer*. Yes.

One Mr. Merridale sworn.

Mr. *Merridale*. My Lord, this very book did Mercer bring down, told us, He would be hang'd for never a rogue of them all; Did he think to lay his books at my door? I know this is the very book; I took notice of the picture of Sir Henry Vane in it; and he there owned it.

Mercer. I can tell that he owned it, and said it was brought to him to be bound.

Ld Ch. Just. *Hyde*. Here are two hundred of these books delivered to you to sell; fifty you deliver to another. When Mr. L'Estrange comes to search, you open not your doors; when you see you could not stay longer, you run up to deliver it to Mercer, your guest; he would not receive it; you deliver it to his sister; she keeps it in her hands. When her husband had denied books to be there, and his wife under-

standing

standing afterwards you had left it, she was afraid of her husband for denying it, calls him, and gives him the book; and then he said, "He would not be hanged for never a rogue of you all;" throws down the book: And that was the very book she received from you; and yourself did own it, and confess it.

Brooks. As for Mr. L'Estrange, it is not so; he says, when first he knocked at the door, I did not hear him; afterwards I called out, Who's there? Said one, which is Mr. Brooks? Said I, Here. I told them, if they would be civil, I would open the door, give me but leave to put on my breeches. I went and opened it. He doth not swear positively they are my books. My Lord, this Mercer was a lodger in my house, I have often desired him to pay his rent, and since I have been taken, I have sent several messengers: I told him I would seize his goods, and thereupon he speaks against me maliciously. I desire you to consider, I being only a workman, how can I be guilty of sedition and scandalous things? I never printed any thing, I am only a book-binder, that's my trade: I hope you will consider, that I am only a bare workman. My Lord, I desire when they go out, that somebody may stand at the door, that nobody may go in to the jury.

Ld Ch. Just. Hyde. We will take care of that: Have you any more to say?

Brooks. No, my Lord.

Ld Ch. Just. Hyde. You of the jury, you have heard so much of the other indictments of the same nature, I need not say much to this. That which he speaks concerning his trade, I must repeat the same as before; he is not questioned for using, but abusing, of his trade; for publishing and dispersing seditious and scandalous books, printing and publishing, but the evidence is only for publishing. If you be satisfied that he published it, that's the crime; printing alone is not enough, for if a man

print a book to make a fire on, that's no offence, it is the publishing of it which is the crime. You have heard the evidence, how far forth it is proved, two hundred delivered to him, fifty by him delivered to another, this book you see his own conscience tells him what it was; when Mr. L'Estrange came, he would have slipped it into his guest's chamber; he refused it: then he carries it to another. Lay your evidence together; if you find him guilty of the publishing, it is enough.

Jury. We desire to know upon what Statute Law this indictment is grounded?

Ld Ch. Just. Hyde. Upon none; but it is an offence at Common Law, I told you so at first.

[The Jury went forth, and after near an hour's consultation, returned to the Court, and took their places.]

Clerk. Are you all agreed of your verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. The Foreman.

Clerk. Set up the prisoners to the bar: How say you, is Tho. Brewster guilty of the offence whereof he stands indicted, for printing the seditious book called, "The Speeches," &c. or not guilty?

Foreman. Guilty of selling and uttering the said books.

Clerk. What say you, is he guilty of the offence of printing and publishing the book called "The Phoenix," &c. or not guilty?

Foreman. Guilty of publishing it.

Clerk. How say you, is Simon Dover guilty of the offence for printing and publishing "The Speeches, &c." or not guilty?

Foreman. Guilty.

Clerk. How say you, is Nathan Brooks guilty of the offence for printing and selling the said book?

Foreman. Guilty of selling it.

H h h

Clerk.

Clerk. Harken to your verdicts as the Court hath recorded them: You say, that &c. and so you say all?

Jury. Yes.

Mr. Norib. My Lord, we humbly pray sentence against the prisoners.

Ld. Ch. Just. Hyde. You three, Thomas Brewster, Simon Dover and Nathan Brooks; you have been severally indicted for a heinous and great offence: Brewster, you have been indicted for two several books, as full of villainy, and slander, and reproach to the King and Government, as possibly can be: And I will tell you all three, "it is the King's great mercy you have not been indicted capitally; for every one of those books are filled with treason, and you for publishing of them, by strictness of law, have forfeited your lives and all to the King: It is his clemency towards you. You may see the King's purpose; he desires to reform, not to ruin his subjects. The press is grown so common, and men take the boldness to print whatever is brought to them, let it concern whom it will; it is high time examples be made. I must let you and all men know, by the course of the common law, before this new Act was made, for a printer, or any other, under pretence of printing, to publish that which is a reproach to the King, to the State, to his Government, to the Church, nay to a particular Person, it is punishable as a misdemeanour. He must not say, "He knew not what was in it;" that is, no answer in law. I speak this, because I would have men avoid this for time to come, and not think to shelter themselves under such a pretence. I will not spend time in discoursing of the nature of the offence, it hath been declared al-

ready; it is so high, that truly the highest punishment that by law may be justly inflicted, is due to you. But, Thomas Brewster, your offence is double, therefore the Judgment of the Court is,

"That you shall pay to the King for these offences committed, an hundred marks: And for you, (the other two) Simon Dover and Nathan Brooks, you shall pay either of you a fine of forty marks to the King."

"You shall either of you severally stand upon the pillory from eleven to one of the clock in one place at the Exchange, and another day (the same space of time) in Smithfield; and you shall have a paper set over your hats, declaring your offence, "For printing and publishing scandalous, treasonable, and factious books against the King and State."

"You shall be committed till the next Goal-delivery without Bail; and then you shall make an open confession and acknowledgment of your offences in such words as shall be directed you."

"And afterwards you shall remain prisoners during the King's pleasure: And when you are discharged, you shall put in good security by recognizance, yourselves 400 l. a-piece, and two securities each of you of 200 l. a-piece, not to print or publish any books, but such as shall be allowed of. And this is the judgment of the Court."

John Twyn refusing to discover who was the Author of the treasonable Libel, was executed a few days after at Tyburn, amidst an amazing great concourse of people, where he acknowledged the justice of his sentence, but refused to name the Author.

The

The Trial of Mr. BENJAMIN KEACH, at the Assizes held at Aillsbury in Buckinghamshire, October 8, and 9. 1664.

BENJAMIN Keach of Winslow, in the county of Bucks, having wrote a little book, entitled, *The Child's Instructor: or, A New and Easy Primer: In* which were contained several things contrary to the doctrine and ceremonies of the church of England; as, that infants ought not to be baptized; That laymen may preach the gospel; that Christ shall reign personally upon the earth in the latter day, &c. He had so soon got it printed, and some of them sent down to him, but one Mr. Strafford, a justice of the peace for that county, received information of it. Whereupon, taking a constable with him, he went himself in quest of the said books; and coming to the house of Mr. Keach, found and seized several of them, bound Mr. Keach over to answer for it at the next assizes in a recognizance of an hundred pounds, and two sureties with him in fifty pounds each. The next assize holden for the said county was at Aillsbury on the 8th and 9th days of October, 1664. Lord Chief Justice Hyde being Judge. On the first of which days, in the forenoon, Mr. Keach was called upon; who answering to his name, was brought to the bar, and examined as follows.

Judge. Did you write this book? Holding out one of the Primers in his hand.

Keach. I writ most of it.

Judge. What have you to do to take other mens trades out of their hands? I believe you can preach as well as write books. Thus it is to let you, and such as you are, have the scriptures to wrest to your own destruction. You have made in your book

a new creed; I have seen three creeds before; but I never saw a fourth till you made one.

Keach. I have not made a creed, but a confession of the Christian faith.

Judge. Well, that is a creed, then.

Keach. Your Lordship said you had never seen but three creeds; but thousands of Christians have made a confession of their faith.

After this the judge observed to the court, several things which were written in the said book, concerning baptism and the ministers of the gospel, which were contrary to the liturgy of the church of England, and so a breach of the act of uniformity.

Keach. My Lord, as to those things—

Judge. You shall not preach here, nor give the reasons of your damnable doctrine, to seduce and infect his Majesty's subjects. These are not things for such as you are to meddle with, and to pretend to write books of divinity: But I will try you for it before I sleep.

After this he gave directions to the clerk to draw up the indictment; and the witnesses were sworn, and ordered to stand by the clerk till the indictment was finished, and then to go with it to the grand inquest.

Judge. Gentlemen of the grand jury, I shall send you presently a bill against one that hath taken upon him to write a new Primer for the instruction of your children: He is a base and dangerous fellow; and if this be suffered, children by learning of it will become such as he is. And therefore I hope you will do your duty.

The

The indictment being long, took so much time to draw it up, that the trial did not come on till the next day.

The next day, the court being set, the grand jury found the bill, and brought it in indorsed *Billa vera*.

Clerk. Benjamin Keach come to the bar.

Mr. Keach comes to the bar.

Clerk. Hear your charge. "Thou art here indicted by the name of Benjamin Keach, of the parish of Winflow, in the county of Bucks: For that, thou being a seditious, heretical, and schismatical person, evilly and maliciously disposed, and disaffected to his Majesty's government, and the government of the church of England, didst maliciously and wickedly, on the first day of May, in the 16th year of the reign of our Sovereign Lord the King, write, print, and publish, or cause to be written, printed, and published, one seditious and venomous book, entitled, "The Child's Instructor: or, A New and Easy Primmer:" wherein are contained, by way of question and answer, these damnable positions, contrary to the book of Common Prayer, and the liturgy of the church of England: That is to say, in one place you have thus written; Q. "Who are the right subjects of baptism?" A. "Believers, or godly men and women only, who can make confession of their faith and repentance." And in another place you have maliciously and wickedly written these words: Q. "How shall it then go with the saints?" A. "O, very well. It is the day that they have longed for: Then they shall hear that sentence, "Come ye blessed of my Father, inherit the kingdom prepared for you;" and so shall they reign with Christ on the earth a thousand years, even on mount Sion, in New Jerusalem; for there will Christ's throne be, on which they must sit down with him." Then follows this question, with the answer thereto, in these plain English words: Q. "When shall the wicked

and the fallen angels, which be the devils be judged?" A. "When the thousand years shall be expired, then shall the rest of the devils be raised, and then shall be the general and last judgment, then shall all the rest of the dead and devils be judged by Christ and his glorified saints; and they being arraigned and judged, the wicked shall be condemned, and cast by the angels into the lake of fire, there to be burned for ever and ever."

In another place thou hast wickedly and maliciously written these plain English words: "Why may not infants be received into the church now, as they were under the law?" A. "Because the fleshly seed is cast out: Though God under that dispensation did receive infants in a lineal way by generation, yet he that hath the key of David, that openeth and no man shutteth, that shutteth and no man openeth, hath shut up that way into the church; and hath opened the door of regeneration, receiving in none now but believers." Q. "What then is the state of infants?" A. "Infants that die are members of the kingdom of glory, tho' they be not members of the visible church." Q. "Do they then that bring in infants in a fleshly lineal way, err from the way of truth?" A. "Yea, they do; for they make not God's holy word their rule, but do presume to open a door that Christ hath shut, and none ought to open." And also in another place thou hast wickedly and maliciously composed A Short Confession of the Christian Faith; wherein thou hast affirmed this concerning the second Person in the Blessed Trinity, in these plain English words: "I also believe that he rose again the third day from the dead, and ascended into heaven above, and there now sitteth at the right hand of God the father; and from thence he shall come again at the appointed time of the Father, to reign personally upon the earth, and to be Judge of the quick and dead." And in another place thou hast wickedly

wickedly and maliciously affirmed these things concerning true gospel-ministers, in these plain English words following: "Christ hath not chosen the wise and prudent men after the flesh, not great Doctors and Rabbies; not many mighty and noble, saith Paul, are called; but rather the poor and despised, even tradesmen and such-like, as were Matthew, Peter, Andrew, Paul, and others. And Christ's true ministers have not their learning and wisdom from men, and from universities, or human schools for human learning. Arts and sciences are not essential to the making of a true minister, but the gifts of God, which cannot be bought with silver and gold; and also as they have freely received the gift, so they do freely administer: They do not preach for hire, for gain and filthy lucre: They are not like the false teachers, who look for gain from their quarter; who eat the fat, and clothe themselves with the wool, and kill them that are fed; those that put not into their mouths, they prepare war against: Also they are not lords over God's heritage, they rule them not by force and cruelty, neither have they power to force and compel men to believe and obey their doctrines, but are only to persuade and instruct; for this is the way of the gospel, as Christ taught them——"

"And many other things hast thou seditionously, wickedly, and maliciously written in the said book, to the great displeasure of Almighty God, the scandal of the liturgy of the church of England, the disaffection of the King's people to his Majesty's government, the danger of the peace of this kingdom, to the evil example of others, and contrary to the statute in that case made and provided." How say you, Benjamin Keach, are you guilty, or not guilty?

Keach. The indictment is so very long, that I cannot remember half of it, nor have I been accustomed to plead to indictments: therefore I desire a copy of it, and liberty

to confer with counsel about it, in order to put in my exceptions, and then I shall plead to it.

Judge. 'Tis your intention, I perceive, to delay your trial to the next assize.

Keach. No, my Lord, I have no design by this to delay my trial.

Judge. I will not deny you what is your right, but you must first plead to your indictment, and afterwards you shall have a copy of it.

Keach. I desire I may have a copy of it before I plead, in order to put in my exceptions against it.

Judge. You shall not have it, before you plead guilty or not guilty.

Keach. 'Tis what has been granted to others.

Judge. You shall not have it first; and if you refuse to plead guilty or not guilty, I shall take it *pro confesso*, and give judgment against you accordingly.

Keach. Not guilty, my Lord.

Judge. Now you may have a copy of your indictment, and I will give you an hour's time to consider of it.

Keach. If I may have no longer time, I don't desire one.

Judge. I have something else to do than wait upon you; you are not a person fit to go abroad till next assize, and you will think it hard if I should commit you to goal till then; but because you shall not say but that you were offered fair, if you will find sufficient sureties for your appearance at the next assize, and for your good behaviour till then, you shall not be tried till then.

Keach. My Lord, I'm content to be tried now.

Judge. Go on then, a God's name.

Clerk. Gentlemen of the jury, answer to your names, &c.

Then the jury were sworn, well, and truly to try the traverse between the King's Majesty, and the prisoner at the bar.

Judge. Clerk, read the indictment, (He reads it.)

Gentlemen of the jury, the prisoner at the bar has pleaded Not Guilty, and your charge is to inquire whether he be guilty or not.

Then the witnesses were sworn, who were Neal and Whithall.

Neal deposed, That Justice Strafford sent for him to his house; when he came there, the Justice sent him back again for his staff of authority: which being done, he went with the Justice to one Moody's stall, and asked for some of the Primmers which he had: he answered, that he had none. That from thence they went to Mr. Keach's house, where they first saw his wife, who told them he was in an inward room. They asked her, if there were not some Primmers in the house? she said, there was; and about thirty were brought forth, and delivered to them.

Then Justice Strafford himself was also examined: he said, That he found the Primmers, now before the court, in Benjamin Keach's house, and seized them; and that the prisoner at the bar had confessed before him, that he writ and composed the said book.

Then a copy of the prisoner's examination before the said Justice, signed with his own hand, was produced and read; wherein was contained, That the prisoner being asked, whether he was the author or writer of the said book? answered, Yes he was. And further declared, That he delivered a part of the copy to one Oviat, a printer at London, since dead; and that the rest of the copy he sent up by another hand, but that he knew not who printed it: That about forty of them were sent down to him, of which he had dispersed about twelve, and that the price was five-pence each book.

After this the Judge called for a Common-Prayer-Book, and laid it before him;

and ordered one of the Primmers to be given to the gentlemen of the jury, and bid them look on those parts where the leaves were turned down.

Judge. Clerk read those sentences in the indictment, which are taken out of the book, that the jury may turn to them, and see that the said positions are contained in the book.

Clerk. Q. "Who are the right subjects of baptism?" A. Believers or Godly men and women only, who can make confession of their faith and repentance.

Judge. This is contrary to the book of Common-Prayer, for that appoints infants to be baptized, as well as men and women. (Here he read several places in the liturgy, wherein the baptizing of infants is enjoined and directed.)

Clerk reads. Q. "How shall it then go with the saints?" A. Oh very well! it is the day that they have longed for: then they shall hear that sentence, "Come ye blessed of my father, inherit the kingdom prepared for you:" And so shall they reign with Christ on the earth a thousand years, &c.

Judge. This is contrary to the creed in the book of Common-Prayer, and is an old heresy, which was cast out of the church a thousand years ago, and was likewise condemned by the council of Constance about five hundred years ago, and hath lain dead ever since, till now this rascal hath revived it.

Clerk reads. Q. "Why may not infants be received into the church now, as they were under the law?" A. Because the fleshly seed is cast out, &c. Q. "What then is the state of infants?" A. Infants that die, are members of the kingdom of glory, though they be not members of the visible church. Q. "Do they then that bring in infants by a fleshly lineal way, err from the truth?" A. Yes, they do; for they make not God's holy word their rule, but

but do presume to open a door that Christ hath shut, and none ought to open.

Judge. This is also contrary to the book of Common-Prayer, which appoints infants to be received into the church, and directs the priest to say, when he hath sprinkled the child, "We receive this child into the congregation of Christ's flock. And whereas he says that infants that die are members of the kingdom of glory, though not of the visible church, he speaks this of infants in general, and so the child of a Turk or heathen is made equal with the child of a Christian: But the church hath otherwise determined; that is, if an infant die after baptism, and before it hath actually sinned, it is saved, because original sin is washed away in baptism. Read on.

Clerk. Also in another place thou hast wickedly and maliciously composed A short Confession of Faith, in which thou hast affirmed thus, concerning the second person in the Blessed Trinity, in these plain English words; "I also believe that he rose again the third day from the dead, and ascended into heaven, and there now sitteth at the right hand of God the father; and from thence he shall come again at the appointed time of the father, to reign personally upon the earth, and to be the Judge of the quick and the dead.

Judge. This is contrary to our creed: for whereas he saith, "From thence he shall come again at the appointed time of the father, to reign personally upon the earth, and to be Judge both of the quick and the dead;" our creed only saith, "From thence he shall come to judge both the quick and the dead."

Clerk. And in another place thou hast wickedly and maliciously affirmed these things concerning true gospel-ministers, in these plain English words following: "Christ hath not chosen the wise and prudent men after the flesh, nor great Doctors

and Rabbies;" Not many mighty and noble, saith Paul, are called, &c. as above.

Judge. This also is contrary to the book of Common-Prayer: for whereas the position in the indictment saith, Christ hath not chosen great Rabbies and Doctors, but rather the poor and despised, and tradesmen; the book of Common-Prayer doth admit of such. (Here he read some passages concerning the qualification of ministers, and their manner of consecration.) Because Christ, when he was upon the earth, made choice of tradesmen to be his disciples, therefore this fellow would have ministers to be such now; taylors, and pedlars, and tinkers, and such fellows as he is: But it is otherwise now, as appears from the manner in which the church has appointed them to be chosen, ordained, and consecrated.

The Judge having thus gone through the indictment, the prisoner began to speak in his defence.

Keach. As to the doctrines—

Judge. You shall not speak here, except to the matter of fact; that is to say, whether you writ this book or not.

Keach. I desire liberty to speak to the particulars in my indictment, and those things that have—

Judge. You shall not be suffered to give the reasons of your damnable doctrine here to seduce the King's subjects.

Keach. Is my religion so bad, that I may not be allowed to speak?

Judge. I know your religion, you are a fifth-monarchy-man; and you can preach, as well as write books; and you would preach here, if I would let you: but I shall take such order, as you shall do no more mischief.

Keach. I did not write all the book, for there is an epistle to it written by another hand; neither can it be proved that I writ all that is put into the indictment.

Judge.

Judge. It is all one whether you writ it yourself, or dictated to another to write it: but it appears by your examination under your own hand, that you wrote it all.

Keach. Because I writ the major part of it, I was contented to let it go with the world all in my examination before Justice Strafford; but I cannot in conscience say I wrote it all: nor is it proved that I published it.

Judge. Yes, you did; for Moody had six books of you.

Keach. I did neither sell them, nor deliver them to him.

Judge. He had them at your house, and it is not likely he should take them without your consent.

Keach. I do not say he had them without my consent.

Judge. It is all one then, as if you delivered them.

Here the Judge summed up the evidence, and gave his charge to the jury; but this the amanuensis has omitted.

The jury being withdrawn, staid for some hours; at length one of the officers who attended them came in.

Officer. My Lord, the jury about the Primmers cannot agree.

Judge. But they must agree.

Officer. They desire to know whether one of them may not come and speak with your Lordship, about something whereof they are in doubt.

Judge. Yes, privately: (And then ordered one to come to him on the bench.)

Then the officer called one, and he was set upon the Clerk's table, and the Judge and he whispered together a great while; and it was observed, that the Judge having his hands upon his shoulders, would frequently shake him as he spake to him. Upon this person's returning, the whole jury quickly came in, and being according to custom called over by their names, the Clerk proceeded.

Clerk. Are you agreed in your verdict?

Jury. Yes, yes.

Clerk. Who shall speak for you?

Jury. Our foreman.

Clerk. How say you, is Benjamin Keach guilty of the matters contained in the indictment against him, or not guilty?

Foreman. Guilty in part.

Clerk. Of what part?

Foreman. There is something contained in the indictment, which is not in the book.

Clerk. What is that?

Foreman. In the indictment he is charged with these words, "When the thousand years shall be expired, then shall all the rest of the Devils be raised;" but in the book it is, "Then shall the rest of the dead be raised."

Clerk. Is he guilty of all the rest of the indictment, that sentence excepted?

One of the Jury. I cannot in conscience find him guilty, because the words in the indictment and the book do not agree.

Judge. That is only through a mistake of the Clerk's, and in that sentence only; and you may find him guilty of all, that sentence excepted; but why did you come in before you were agreed?

Foreman. We thought we had been agreed.

Judge. You must go out again, and agree: and as for you that say you cannot in conscience find him guilty, if you say so again, without giving reasons for it, I shall take an order with you.

Then the jury withdrew, and in a little time returned again.

Clerk. Are you agreed in your verdict?

Jury. Yes.

Clerk. How say you, is Benjamin Keach guilty of the matters charged in the indictment against him, or not guilty?

Foreman. Guilty of the indictment; that sentence, wherein Devils is inserted instead of Dead, only excepted.

Upon

Upon this, Benjamin Keach was called to the bar, and the Judge proceeded to pass sentence upon him as follows.

Judge. Benjamin Keach, you are here convicted of writing and publishing a seditious and scandalous book, for which the court's judgment is this, and the court doth award, that you shall go to gaol for a fortnight, without bail or mainprize; and the next Saturday to stand upon the pillory at Aylesbury, for the space of two hours, from eleven of the clock to one, with a paper upon your head with this inscription, "For writing, printing, and publishing a schismatical book, entitled, The Child's Instructor, or a New and Easy Primmer." And the next Thursday to stand in the same manner, and for the same time, in the market of Winslow; and there your book shall be openly burnt before your face by the common hangman, in disgrace of you and your doctrine. And you shall forfeit to the King's Majesty the sum of 20*l.* and shall remain in gaol until you find sureties for your good behaviour and appearance at the next assizes, there to renounce your doctrine, and make such public submission.

as shall be enjoined you. Take him away, keeper.

Keach. I hope I shall never renounce those truths which I have written in that book.

Clerk. My Lord, he says he hopes he shall never repent.

But the Judge taking notice, the gaoler took him away.

According to the sentence passed upon him, he was kept close prisoner till the Saturday following, and then about eleven o'clock was carried to the pillory at Aylesbury; where he stood full two hours to a minute, was denied the liberty of speaking to the spectators, and had his hands as well as his head carefully kept in the pillory the whole time.

On the Thursday following he stood in the same manner and for the same time at Winslow, the town where he lived, and had his book burnt before him.

After this, upon paying his fine, and giving sufficient security for his good behaviour, he was set at liberty; but was never brought to make a recantation.

The Proceedings in the House of Commons, touching the Impeachment of
EDWARD, late EARL of CLARENDON, LORD HIGH CHANCELLOR of
ENGLAND, Anno 1667.

October 26, 1667.

MR. EDWARD SEYMOUR charged him *viva voce* with many great crimes, whereupon a debate arose what proceeding ought to be had upon it, some moving to impeach him in the name of the Commons, till articles should be prepared;

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others urged, that witnesses should be first examined to see how the charge could be made good, lest failing, it should reflect on the honour of the house. After long debate, a committee was appointed to search records for parliamentary proceedings in the like cases, and to make report.

Kkk.

30th, The

30th. The report being made by Sir Thomas Littleton, that various proceedings were found in several Parliaments, it occasioned a long debate, several members speaking to the effect following;

Sir Tho: Littleton. That in cases criminal, they find proceedings to have been, sometimes by articles, sometimes by word of mouth; but in capital crimes no proceedings appear till the Earl of Strafford's case, against whom the House carried up a general impeachment, the reason whereof seems to be this: Some votes were made in the House at which the King takes offence, as if they would proceed upon common fame; whereupon they vindicate their proceedings as done in a parliamentary way, and appoint a committee to withdraw for about half an hour to consider the matter for a conference with the Lords about the charge; and upon their report a general charge is carried up to the Lords Bar; the principal charge then was for advising to bring over the Irish army, and the single proof was Sir Henry Vane, so the impeachment went up for High Treason, though no member would positively say he would make the charge good.

So for the Bishop of Canterbury, there was no impeachment, but a charge in general.

And if you take not the same course now, but insist upon examining witnesses first, the difficulties will be unanswerable, for is it like that men before they shall see you in earnest will have their names produced against the Earl of Clarendon? If this be your proceeding, we must never expect to impeach a great man more. If you think there is nothing in the charge leave it, but if you think 'tis worth your while, take heed of making such a dangerous precedent as by neglecting it to wound your liberties; but proceed in the usual way with a general impeachment.

Serj. Maynard. I stand not up to give advice, but to speak to matter of fact in the business of Strafford and Canterbury: I attended that business from the beginning, Sir John Closworthy informed something against Strafford to be direct treason, that he had assumed an arbitrary power in Ireland, and dispossessed one Savage by force of arms, and undertook to prove it. Sir Henry Vane also told them, that he had a note taken out of his father's cabinet, containing the advice which Strafford gave the King in that case; namely, the King wanting money, and the question being how he should supply it, he replied, "That if the Parliament was refractory and would not, you stand loosed and absolved from rules of government; you have an army in Ireland which you may employ to reduce them."

Then there was a debate whether they should accuse of treason. And Sir Edward Herbert (the Attorney) said, if you are persuaded the truth is, as is pretended, you may. And so it was; but when the Close Committee had examined the business, they moved the House that some lawyers might be added to them; and had they gone, when they said they were ready, they had not touched one hair of Strafford's head. Then it was considered what was fit to be done: to accuse him of treason would be a dangerous precedent, as if out of many other crimes a treason could be drawn; thereupon it was resolved not to demand judgment from the Lords, because some articles were not treason. Then it was propounded not to state what his offences were, lest it should give advantage to inferior Courts so to proceed; but said, he deserved to be accused of treason; and in conclusion a Proviso was added, not to make that case a precedent.

For the Bishop of Canterbury, the four articles were general, and he was long in prison

prison without any proceeding against him; but after long time he demurred, then new articles were framed, on which he died.

Mr. John Vaughan. You have had a charge opened of a strange nature, and I know not what part of it can be proved, but the reputation of this House is at stake, and of the King too! For where a charge is brought in by some of your members, whereof one Article is, That he should say such words of the King, as by a Statute made by you is a *Præmunire*, and to give council, to levy war upon the kingdom; is it agreeable to our duty to the King and Kingdom to let it die?

For the person concerned, I know not which way his Honour can be whole without his giving an answer to his charge; for mark the consequence, if the King should take him to favour again before cleared, will not the world say a person is received to favour again, who gave the King council against the kingdom, and traduced the King; and how can he be whole in his honour this way?

Obj. But it will be said, we must have ground to put him to answer.

Ans. Whether you have ground enough to prove I know not; but you have ground enough to make him answer to clear himself. Suppose those two articles had been charged on a member of this House, what would it have become that member to do? Should he sit still and say, I will make no answer, but see whether the House will make more proof? If he should do so, the not making an answer is reason enough to charge him.

I can give you instances of persons charged in Parliament, who though not nominated, yet being (as it were) pointed at, petitioned that they might answer, and so would any man; but when this is bruited up and down, will not the world say, You never ask the party whether Guilty?

The Duke of Suffolk was charged upon common fame, and if that were a ground for a charge then (which I do not say it was) so it is in this case; but he moved that he might be heard; and though it was desired he might be committed, yet it was justly rejected till he had answered. Then for the nature of the charge, if it be true, it is very high, but whether it be treason is another matter, it is brought to you under no name; when you make the charge, it becomes you to say what it is; therefore choose a Committee to reduce the Accusation into heads, and bring them to you, without which you cannot right yourselves, nor him, if innocent.

For the way of it, it cannot be thought fit to publish your witnesses and the matter before hand; if in private causes the defendant and plaintiff should have a publication before hand, no cause would be rightly judged, much less when you have publication of all which concerns the one, but nothing of the other. Again, if a witness be examined concerning matters in his own knowledge, if he gives evidence; where he is not brought judicially to give it; if he hath testified any thing which brings him within the Statute of False News, how can he avoid the penalty? For it's not enough for him to say he knows it, but he must have others to justify it.

As for the persons who bring the Charge, they are your own Members, which the Writs return for honest and discreet men, and if you are satisfied of that, how can you reject their complaint, though grounded upon "Common Fame," as all accusations are, seeing they tell you, they can bring proof of what they say?

Then for "Common Fame," if a man spends largely, and hath no visible way to get an estate, no man accuseth him to have gotten it unlawfully; yet he may be put to clear himself from what "Common Fame"

fame chargeth him with. Upon suspicion of felony, I may bring a man before a magistrate to clear himself; so in the course of indictments and presentments, a charge is given of what things are to be presented; then a proclamation is made, That if any one can give evidence, he may be sworn, but if no evidence appear, yet they may indict.

Then it will be said, the oath is a material thing, but we are proceeding without an oath.

To this I answer, What this house shall charge is of more authority than the oaths of ordinary witnesses; Peers, though not upon oath, are supposed to do right; so are we upon the reputation of our honesty and discretion.

Mr. L. H. I am sensible the house may think me partial, but I shall endeavour to shew myself not so much a son of the Earl of Clarendon as a member of this house; and I assure you, that if he shall be found guilty, no man shall appear more against him than I; if not, I hope every one will be for him as much as I; let every man upon his conscience think what of this charge is true, for I believe that if one article be proved, he will own himself guilty of all.

Sir Hen. Fin. An impeachment there must be, if there be cause; such accusations are not to be passed over in silence.

I believe not one truth in the law more than in this proposition, That there is no such thing as treason by common law, or by equity, and we hold our lives by that law; Before the 25th of Edward III. a man could scarce speak any thing but it was treason, in parliament or out; but no man ought to die as a traitor, who hath not literally offended that law, or some other made since: There is indeed in that law a proviso about the parliament's declaring what is treason; but note the danger of taking declaratory powers, which I fear

hath brought us into a reckoning of blood, which we have not yet paid for.

The power of parliaments is double; Legislative, which hath no bounds; Declaratory, by pronouncing judgments.

And though I know not what the legislative power of a Parliament cannot do, yet it is not in the power of the parliament, King, Lords nor Commons, to declare any thing to be treason, which is not in the common law felony before. The proviso in Strafford's case was (it's true) made for inferior courts; but I hope we shall not so proceed as must needs draw after it a *Ne trabatur in exemplum*, and your own act this parliament shews, that all done by Strafford, a-part, or together, was not treason: And it behoves us to take heed we thwart not our own argument.

For the manner then, consider how you should proceed if it were out of parliament, and how the bringing of it into this house alters it.

If it were out of parliament, without doubt the accusation should be proved before hand, and those who discover it are guilty of felony. This provides for the subject, that the witnesses must be two, and for the King, that none shall discover the evidence.

But suppose the charge be for misdemeanors, the trial then is not to be by the Lords, but by the Commons; for the Lords are his peers only in cases capital.

How then doth the bringing it into parliament alter the case? If the parliament set aside laws in this case, we should be happy to see law declaring what is the power of parliaments.

There is no precedent produced which is singly of weight to guide you, therefore if you proceed, let it be as near as possible by the good old laws; namely, That there be an accusation founded upon an oath and the evidence kept secret, I propose that way for the very reason that others oppose

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it, (viz.) The accusation goes over the kingdom, and it will bring dishonour to the house, the King, and the Earl; for the honour of the house it will be hard to say, the charge was brought in upon mis-information. A person accused for advising to bring in arbitrary government, &c. and for saying the King is not fit to govern; If this be true, though it be not treason in the formality of the law, it deserves no less punishment than if it were; but if not found guilty, consider the case. If one say, A killed a man; and it is not so, must not he give reparation? We have an accusation upon hear-say, but if it be not made good, the blackest scandal which hell can invent, lies at our door.

Then Sir Thomas Meers moving to refer it to the committee of grievances,

Mr. *Vaugh.* You should have put the first question before another had been moved, the Earl of Middlesex (Cranfield's case) will not hold parallel; he was accused of bribery, which might be proved by their own books, but this is for scandalizing the King, &c. and where shall the Committee of Grievances enquire about it? You say let them hear the persons.

But suppose they be of the Lords House, can you send for them? Or if you do, will they come and say it? The matter of this accusation is such, that if it lies in the knowledge of a single person, if he delivers it extra-judicially (which he doth, if not upon oath) he may be undone by it, and hazard his person too: At the Committee of Grievances the persons must be known, and what they can say, and then we may conclude what will follow: Besides, their quality may be such as they cannot be brought, or their discretion such as they will not answer.

Sir *Richard Temp.* Tell but the Lords that a man in public place hath misbehaved himself, and they will sentence him, if he purge not himself; Never yet were wit-

nesses examined before the trial in case of treason or felony, for then if there be two witnesses, a way may be found by poyson, or some other way, to take away one.

Serj. *Mayn.* No man can do what is just but he must have what is true before him; where life is concerned, you ought to have a moral certainty of the thing, and every one be able to say upon this proof in my conscience, "This man is guilty." Common fame is no ground to accuse a man, where matter of fact is not clear: To say an evil is done, therefore this man hath done it, is strange in morality, more in logick.

Upon the whole debate it was voted,

That the committee do reduce the accusation to heads and present them to this house.

November 6, 1667.

Sir Thomas Littleton reports that the accusation was reduced to heads, which he read in his place, and afterwards delivered the same in at the Clerk's table, which are as followeth, viz.

I. That the Earl of Clarendon hath designed a standing army to be raised, and to govern the kingdom thereby, and advised the King to dissolve this present parliament, to lay aside all thoughts of parliaments for the future, to govern by a military power, and to maintain the same by free quarter and contribution.

II. That he hath in the hearing of the King's subjects, falsely and seditiously said, That the King was in his heart a papist, or popishly affected, or words to that effect.

III. That he hath received great sums of money for the procuring of the Canary patent, and other illegal patents; and granted illegal injunctions to stop proceedings at law against them, and other illegal patents formerly granted.

IV. That

IV. That he hath advised and procured divers of his Majesty's subjects to be imprisoned against law, in remote islands, garrisons, and other places, thereby to prevent them from the benefit of the law, and to produce precedents for the imprisoning any other of his Majesty's subjects in like manner.

V. That he procured his Majesty's customs to be farmed at under rates, knowing the same, and great pretended debts to be paid by his Majesty, to the payment of which, his Majesty was not in strictness bound: And afterwards received great sums of money for procuring the same.

VI. That he received great sums of money from the Company of Vintners, or some of them or their agents, for enhancing the prices of wines, and for freeing them from the payment of legal penalties which they had incurred.

VII. That he hath in a short time gained to himself a greater estate than can be imagined to be gained lawfully in so short a time; and contrary to his oath, he hath procured several grants under the seal from his Majesty to himself and relations, of several of his Majesty's lands, hereditaments and leases, to the disprofit of his Majesty.

VIII. That he hath introduced an arbitrary government in his Majesty's foreign plantations, and hath caused such as complained thereof before his Majesty and council, to be long imprisoned for so doing.

IX. That he did reject and frustrate a proposal and undertaking, approved by his Majesty for the preservation of Mevis, and St. Christophers, and reducing the French plantations to his Majesty's obedience, after the commissions were drawn for that purpose, which was the occasion of our great losses and damage in those parts.

X. That he held correspondence with Cromwell and his complices, when he was in parts beyond the seas attending his Majesty, and thereby adjoined to the King's enemies.

XI. That he advised and effected the sale of Dunkirk to the French King, being part of his Majesty's dominions; together with the ammunitions, artillery, and all forts of stores there, and for no greater value than the said ammunition, artillery and stores were worth.

XII. That the said Earl did unduly cause his Majesty's letters patent under the great seal of England, to one Dr. Crowther, to be altered, and the enrolment thereof to be unduly rased.

XIII. That he hath in an arbitrary way examined and drawn into question divers of his Majesty's subjects, concerning their lands, tenements, goods, chattels, and properties, determined thereof at the council-table, and stopped proceedings at law by order of the council-table, and threatened some that pleaded the statute of 17th of Car. I.

XIV. That he hath caused *quo warranto's* to be issued out against most of the corporations of England, immediately after their charters were confirmed by act of parliament: to the intent he might require great sums of money of them for renewing their charters, which, when they complied withal, he caused the said *quo warranto's* to be discharged, and prosecution therein to cease.

XV. That he procured the bills of settlement for Ireland, and received great sums of money for the same, in most corrupt and unlawful manner.

XVI. That he hath deluded and betrayed his Majesty and the nation in all foreign treaties and negotiations relating to the late war, and betrayed and discovered his Majesty's secret counsels to his enemies.

XVII. That he was a principal author of that fatal counsel of dividing the fleet, about June, 1666.

The Clerk having read them a second time it was moved, That in regard the articles

articles were many, they might be referred to the committee to see how far they were true, because fame is too slender a ground to bring a man upon the stage.

Sir Francis Gader. Seconds it, because new matter was now added to what was formerly charged *viva voce* in the house.

Sir Robert Howard. Suppose the Earl of Clarendon innocent, and yet charged and imprisoned (which is the worst of the case) he afterwards appears innocent and is discharged, receiving no more hurt than other subjects have done, namely, the Duke of Buckingham.

Object. But why should we commit him?

Answer. For proof, whether the articles be true or not. Suppose men for self preservation will not venture to come, not knowing how they may trust themselves, and so you have no proof, he very guilty, and you not able to proceed? Is the inconvenience greater for an innocent person (if he prove so) to suffer a few days, than for you to lose your reputation for ever. If this man be not brought to his trial, it may force him to fly to that which he counselled, that is, that we may never have parliament more.

Sir Francis Gader. I am not against proceeding, but unsatisfied to do it without witness, it being like swearing in *verba magistri*.

Sir John Hall. I hat the committee undertake to make good the charge, otherwise examine witnesses.

Mr. Haugban. You admit the accusation to be matter for a charge, if the committee find proof; if you intend to make this a distinct case I leave it to you; but if this be to settle the course of the proceedings of the House, I am against it; for this is ordering a way of proceeding in the Earl of Clarendon's case, which shall not be a general rule. Tho' I cannot say one of the articles to be true, yet I know them to be a full charge if made good, and you are pre-

scribing a course neither proper, nor ever practised. A witness who speaks without oath is subject to damage; not so upon oath, because the law compels him: And whereas it hath been said, If witnesses attest before the House of Commons, what judges dare meddle in it? I answer, such judges as meddled in the case of Sir John Elliot, &c. and the ship-money.

Sir R. Temple. A grand jury is capable to present upon their own knowledge, and are sworn to keep the King's counsel and their own, and I believe there is not one article of the accusation but will be made good.

Sir Rob. Howard. As I am sensible of the danger of publishing witnesses beforehand, so I would have every one satisfied, therefore take the articles one by one, and according as you shall find what your members may say for the truth, you may be induced to proceed or not.

Sir Tho. Ob. The House ought to have something to induce their belief, which they have had from several members, and I know how some will be made good.

Sir Tho. Little. What article members of the House do not offer you matter to induce you to believe, you may lay it aside; therefore hear what shall be said, and proceed accordingly.

Mr. John Tr. You cannot expect witnesses will appear before you, Lords will not, nor can you expect Commoners should; for when you are up and gone, nothing can protect a Commoner, if this information be not judicial.

At last the question was put whether to refer it to a committee.

Yeas, 128.

Noes, 194.

322.

Then

Then the first article was read to see what would be said to induce the House to impeach.

The first article read.

Sir Rob. How. } Heard from persons of quality.

Lord Vaugh. } That it would be proved.

The second article was read.

Lord St. Job. Persons of great quality have assured him to make it good, and if they perform not, he will acquaint the House who they are.

The third article read.

Mr. Ed. Seym. Sufficient persons will make it good, with this addition, when he received the money, he said, "So long as the King is King, and I Lord Chancellor, the patent will stand."

The fourth and fifth articles read.

Sir R. Temp. Divers have undertaken to make them good, if they do not I will name them.

About his receiving money of vintners.

Sir Rob. Carr. That he knows who will prove it.

About his getting a great estate so suddenly.

Mr. Ed. Seym. I suppose you need no proof the sun shines at noon-day.

Sir Tho. Littl. The matter of fact in the article is easily made out, for his place as Chancellor could not be worth above 4 or 5000 l. per ann.

About introducing an arbitrary government in the plantations.

Sir Tho. Littl. } One Farmer and others,

Sir Tho. Osb. } came from the Barbadoes to complain of it, and lodg'd their petition in this House, but were imprisoned that they might not be heard.

About frustrating proposals for preserving Nevis, &c.

Sir Charles Wheel. My Lord Chancellor only opposed it.

About holding correspondence with Cromwell.

Mr. Swinf. That is pardon'd by the act of indemnity.

Vaugh. The committee were aware of that, but the defendant may plead it, and prove that he is not out-law'd.

Sir Char. Wheel. I want not clearly to prove it.

Sir Rob. How. For such secret things as these he ought to plead, notwithstanding the act of oblivion, that the world may know who are undiscerned enemies.

Mr. Hambd. It is not only an Act of Parliament, but oblivion: and no man ought to be so much as accused for what was done before.

Mr. Vaugh. If the pardon be general, the judges and you are to note it, but if it hath qualifications (as that act hath) they are not to note it; for you must say there is no indictment or outlawry against him (for such the act excepts) or the article is to stand.

Then the act was read.

Mr. Swinf. The clause for pardon is absolute, and any man accused, pleading it shall not be sued, nor his fault mentioned, and this is to all offences and offenders; and for those who betrayed the King beyond sea (who are excepted) they must be prosecuted within two years.

Object. You will say, he may plead that act.

Answer. By the same rule, any man who committed a fault, during the troubles, may be put to plead it for pardon.

Serj. Mayn. We profess that there shall be candour in our proceedings, Do we therefore believe this great man is outlaw'd? If not, how shall we accuse him of what we believe not true?

Mr. Vaugh. When I am satisfied of a thing, I am not ashamed to own it, I find now, having perused the act, that he is within the clause. The indemnity is general, and he is within it if not excepted, the exception reaches those who have bold intelligence

ligence with the King's enemies, so as they be prosecuted within two years, this he is not, therefore is clear.

So upon the debate, the article was expunged the paper without a vote.

About the sale of Dunkirk.

Sir Tho. Osb. A great Lord told me that the Earl of Clarendon had made a bargain for Dunkirk three quarters of a year before it was known.

About sealing Doctor Crowther's patent.

Mr. Street. The King gives the living to Crowther, in the grant is a mistake of a county, Crowther finds the mistake, and petitions the King to amend it; the King calls for the Chancellor and seal, and in the King's presence it was amended and sealed.

Sir Tho. Littl. The crime seems as great as a Chancellor could commit; the King was to present by such a day or not at all; the error was found after the day, so that the King (by act of Parliament) had lost his right. The Chancellor did alter the patent, and the record was fetch'd away by one of the Chancellor's servants, and brought back, rased and altered, which might be done, (and in other cases is done) where a word only hath been mistaken; but that is in case of something perfectly in the King's power, and to save new sealing; but here could be no new sealing, the time being elapsed: It was to throw another man out of his freehold, and is a great crime.

About drawing men's lands into question.

Mr. Thom. I shall be able to make it out.

About *quo warranto's* to corporations.

Sir Tho. Littl. This is so publick a thing, that it need not be proved.

About the settlement of Ireland.

Sir Rob. How. I doubt not but it will be made out.

About foreign treaties.

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Sir Tho. Littl. This will appear by the treaties themselves, putting us in hopes of peace, and so hindering the fleet's setting out.

About miscarriage of the war.

Mr. Thom. I want not persons to bring to make it good.

Sir Tho. Littl. Sir Edward Sprag desires money to give an intelligencer, and has it; Sprag brings the intelligencer to the King, the King commands him to meet him at the Chancellor's, there he met the King, and then order was given to divide the fleet.

Mr. Marvel chargeth Mr. Seymour with saying in his accusation, That the King was insufficient for government, which is now omitted in the charge, and desires he may declare where he had it.

Mr. Seym. The party that told me at first, differed something afterwards, therefore I rather withdraw it than to trouble you with uncertainties; but a gentleman in the House can give you further satisfaction in it.

Sir John Den. A Peer of the land heard the Earl of Clarendon say in a coach, That the King was an unactive person and indisposed for government: This will be made good.

Upon debate it appearing probable that these words were spoken before the act of oblivion, it passed over.

About the customs.

Sir Rich. Temp. I have been informed that he had a share for under-letting the customs and 40,000*l.* bribe for getting pretended debts from the King.

Sir Tho. Osb. The Earl of Clarendon said, Bid who would for the customs, none should have them but the old farmers.

Mr. Prynn. Having gone over the articles, we should know where and when the words were spoken.

Mr. Seym. That will be a way to suppress the evidence, I hope you will impeach

M m m. him

him at the Lord's bar, and in due time produce your witnesses.

Mr. *Prynn*. You must resolve to impeach him of treason, or misdemeanour, and name it accordingly.

Sir *Ed. Walp.* You ought first to give a title to your impeachment, for if it be for treason, you will move for commitment; if it be for impeachment in general, not.

Mr. *Coleman*. What is laid before you is only by hearsay; but no assurance that it will be made good; only that if they who reported it do not make it good, you shall know who they are. In the Earl of Strafford's case (the worst of precedents) the House proceeded not, till one spoke in the House upon his own knowledge, and another engaged his reputation to make it good.

Sir *Rob. Atk.* Those who have given you inducements to proceed, do it at third hand, and though they may know the credit and impartiality of those that told them, yet you do not.

Sir *Tbb. Littl.* A question should be put, Whether this House hath sufficient inducement to impeach? Afterwards, consider what the title shall be, then appoint a committee to frame articles.

Which question being put, was carried in the affirmative.

Then adjourned.

November, 9.

The first article read.

Sir *John Goodrick*, Treason ought to terminate in an overt-act, which designing is not, therefore pray read the statutes.

Thereupon sundry statutes were read.

25 Ed. 3.

1 Hen. 4. Cap. 10.

1 Ed. 6. Cap. 12.

1 Q. Ma.

13 Car. 2d.

14 Car. 2d. Cap. 29.

Mr. Steward declared it to be transcendent misdemeanour, but no treason.

Mr. *Vaugh.* Two questions will be considered, one, Whether what's charged in the article was treason in common-law before—25 Ed. 3. That so we may understand the nature of treason; the other, Whether by any subsequent act it is made otherwise.

Mr. *Wall.* The advice given to the King I look upon to be this. To establish a new government, to be governed by Janisaries instead of a Parliament; to have a Divan and a great minister of state, instead of Vizer Bassau, A worse plot than that of the 5th of November; there, if the Lords and Commons had been destroyed, there would have been succession, but here both had been destroyed for ever. Then in order to the debate consider how the law looks on it; for though we may accuse on less evidence than she may judge, yet we must be cautious in naming the crime. What therefore doth the law call this before 25 Ed. 3? then look whether the power of constructive treason be taken away since.

Sir *Fran. Goodr.* The matter concerns life, therefore we should be wary in the exercise of legislative power; you are not tied to rules, but you are now a step towards judicature; the common-law is *jus non scriptum*, and though every treason includes felony, yet not every felony treason, 25 Ed. 3. There is a declaratory power, whether a thing be treason, or other felony; not whether it be treason, and could not be declared treason, if not felony before. In cases capital at common law they might declare it treason, but in cases not capital at common law, they never exercised their declaratory power. Among

Among other things, that statute declares false coined money to be treason, which is but felony at common-law; afterward money being imported, which was not according to the stamp, there was no punishment for it, but as a misdemeanour: Therefore 4 Henry VII. Provision is made against that practice, and it is made treason; but if the Parliament's declaratory-power could have made it treason, what needed a statute on purpose? So that I cannot think the article before you is treason, it not coming within the words of the statute.

Mr. *Vaugh.* I shall speak to the first question, Whether this article was treason at common law; and first remove what some have asserted, namely, That nothing is treason, but what was felony before 25 Edw. III. where petty treason is spoken of, the wife killing the husband, &c. These words follow, If hereafter it come into question whether there be another treason? It shall not be resolved by the Judges, till the Parliament determine it; for in petty treason, if it be treason, it must be felony, because there is killing.

Then comes more, whether raising, &c. and it follows whether it be felony or trespass; and the thing itself is more strange. None ever doubted, but that all treasons of 25 Edw. III. was treason before, and was so resolved 12 Q. Eliz. That by that Act the King declares what should be treason; namely, If any man violates the King's eldest daughter, &c. But by this doctrine if it were not treason, what was it? Either adultery or fornication, when it is only the eldest daughter, not the youngest.

It hath been in all ages a reputation to persons who have been Counsellors to Princes according to emergencies to give counsel to extricate them out of danger, and therefore hard to tax a Minister of State in a case which he acquaints his ma-

ster with; for there can be no treason but against the King himself.

I will shew you what I mean, It is true this is a treason which cannot arise from misprision, because it was spoke to the King himself; but as a Minister of State he has liberty to give Counsel for the King's safety. If a person be able to inform his master what alliances are good for him, it is his duty; so what trades are profitable, what not, &c. So where men or money are wanting, to advise how to extricate is commendable; but when it comes to this, that he breaks in upon the laws, invading the contract between the King and his subjects, it will be as if a man adviseth, That if the King wants money, he may set up highwaymen to take it, and bring it to him, and so the skilfullest for breaking the Law shall be esteemed the best Counsellor; therefore whoever thinks to serve his Prince by breaking the laws, he is so far from a wise man, that he is the highest criminal, &c. Then for the nature of the thing, the treasons declared 25 Edw. III. were declared by the King's Commission, and the treasons were of that nature which concerned Counsel, &c. they were not like to be declared. And there is a passage in Glanvil, called *Seductio Domini Regis*, that is, deceiving the King to what is pernicious to him and his people.

Now see the nature of this crime; If a man counsel his Prince, and practice it such a way as shall render him Prince of Conscience, who hath broken his oath, and all this to his injury, so that he hath no assent to it. Compare this with any treason of 25 Edw. III. Consider it: Here is a person who gives the King advice, which at once must make his people see he hath broken all his faith to his kingdom (and is not the counsel of governing by an army such), all the laws broken, to keep which the King has sworn, and this the King put upon:

upon tho' not inclined to: I assert not this upon the Earl of Clarendon, but upon the article. Who doth this, counsels the highest treason against the common law, because others are so; but if a man will pretend to give counsel, wherein many shall have no benefit by the law, he breaks all parts, and therefore I think this Counsel was treason at common law.

Mr. *Colem.* The Question is, Whether it be in your power to declare this article treason by 25 Edw. III. If he advised an army against the King's consent, it is against the statute; but I suppose that the expression in the article was advice to the King in aid of his government. Your enacting power is a kind of omnipotency, but in a declaratory power you can declare no more than is committed to you, and with safety to the subject you cannot declare this treason; then what must be our rule in declaring, I dare not say: For scarce any man can tell what was treason before 25 Edw. III. was made to bring things to a certainty, and what was uncertain to them who made that law can be certain to us now. As the Judges can declare no other treason; so in your declaratory-power, neither can you declare treason unless there be resemblance to some other like case: the advice said in the Article to be given the King, cannot be within that statute, unless the Counsellor must run the hazard of his advice.

Mr. *Vaugh.* The greatest declarations of treasons which ever were, equal not those 22 Rich. II. in Nottingham Castle: the Judges are called to deliver their opinions upon their faith, and they, declare the Acts to be treason because felony before, and though some of them were hanged for it, yet the Parliament declared the same thing.

Serj. *Mayn.* Was, what is mentioned, treason by the common law, though so said

by the Lords? and what was so declared was repealed, Hen. IV.

Sir *Tho. Littl.* Pray resolve whether it was treason by common-law; and if so, when made so. Some think not, because they find not the Parliament declaring them treasons, as being so at common law, and that that statute was made to bound them, but that was only to bound inferior courts, not themselves; for the Parliament makes not a new crime and then condemns it, but the crime was before, and the Parliament declares it.

Sir *Ed. Thur.* Hath the Parliament declaratory power now? Yes, but it must be by King and Parliament, so it was in the case of the Genoua Ambassador. The Judges would not conclude the articles treason, nor would the Lords alone; and if you come to an equal declarative power with them, you must examine witnesses, or go by a Bill.

Serj. *Charl.* The question is, Whether it be treason by the practice of England, the common-law is the custom of England, and the usage is grounded on precedents, I know not one precedents where words or intentions were treason at common at law, for they are not treason where no Act follows.

Sir *Rich. Temp.* The Article is treason by common law, and Judges have recourse to Glanvil, &c. who say, that giving advice to overthrow the Realm by common law.

Serj. *Mayn.* The Question is, Whether he shall be impeached of treason upon this Article? If you go to treason at common law before 25 Edw. III. you fly out of sight, for the word *seductio* was soon after called *seditio*, seducing, but not said to what; nor were those authors ever reputed of authority: It's true they are sometimes quoted for ornament, but not argument, and not one case in one hundred of Glanvil

vit is law; but when a case comes that is the sheet-anchor of life, and estate, you should be wary; for by wit and oratory that may be made treason which is not; and this which is a great crime, ought not, because great, to be made treason.

Object. But it will be said, levying war against the law, is against the King, and here was an intent to alter the law.

Answer. True, yet a design to levy war is not treason within the statute, here is nothing of act, but words to that end: If a counsellor gives bad advice, it makes it not treason, but by a bill it may be made what you please. By that statute of 25th of Edward III. are more treasons than are mentioned; for it saith if any case happen, the Judges shall stay till the King and Parliament hath declared, so that there is a power, but the *modus* is the question, whether by impeachment or bill; you may the latter, not the former. It was done, but you have repealed it, and have said "None of which pretended crimes are treason;" and what was pretended against him, Strafford? That he had traitorously endeavoured (which is worse than designed) to alter the government, &c. Now where is the difference? Here is advice to raise an army, there to use an army raised, and these you have called pretended crimes, and no treason, which is not comprehended by a law; but to impeach as a traitor, and yet the thing no treason is strange. In this house, other than by bill, you have no power; you carry your impeachment to the Lords, and they may give judgment without coming back to you; declaring by bill is by way of judgment, but, as an impeachment, is only an accusation: so that whatever the consequence is, the Lords judge it, and it never comes back to you, and if you go by bill, you make it treason, *ex post facto*.

Mr. Kang. Concerning what you have declared about Strafford's, that this case is,

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if not less, equal to it, and you have declared that not one charge against him is treason is true thus far, when that act was made I repaired to it, because there were some things which should not have passed so, if there had not been something to secure such charges as these; for there is no expression of any particular charge, but that the charge against the Earl of Strafford was not in the particular, treason; and in the close of the bill, it is said, that the whole proceeding shall be taken away; and if so, no man should speak against the particulars, but look on it as repealed.

Then this is said to be levying war, and it's true, it must be actual, and so not within the charge. And the charge against Spencer was for counselling the King, &c. and is called levying war against the kingdom, and the judgment against him was but banishment; because the sentence was mitigated at the instance of the King.

And for counsel, though counsel is given but in words, yet words are more than counsel, and are an action, otherwise a counsellor is sworn to nothing.

But it may be thought I have not dealt ingenuously with the house, than which I abhor nothing more; when the case of Strafford was before the Lords, I was of opinion the parliament had no declarative power left, because 1st of Henry IV. there was an abolishing of all declared treason, and that no treason, for the future, should be so; and then the treason about the Genoa Ambassador was gone, and all declared treasons were gone; 1st of Hen. IV. and no statute hath recovered them, and if all actual treasons were taken away 1st of Henry IV. or if not then, 1st of Edward VI. then what doth the first of Q. M. do, unless it take away all declaratory treason?

Upon the whole, the question was, whether to accuse of treason upon the first article.

Yeas,

N n n

Yeas, 103.

Noes, 172.

275-

November 11.

The second article was read.

Mr. Prynne. Let the act made by you, about defending the King be read, because it limits prosecution to a time, to see if this be within time.

Mr. Vaughn. In things wherein there is a public defaming the King, it becomes no man here to defend the person accused, if the charge be not proved, let the party himself plead it; you had that which induced you to impeach him, and have declared not to impeach of treason upon the first article: And if any man will add to the rest of the articles he may, but you ought to accuse.

Mr. Solicitor. None accuseth but for Justice sake, and should be glad if the party accused prove himself innocent. There is a duty to the King, and to truth, and it is not fit that an article of this kind, brought into the house, should be laid by, upon pretence that the time is elapsed; for the crime is more than what is mentioned in the act made by you; it is an offence at common-law, and if it be prosecuted by fine and imprisonment, no time is limited.

The third and fourth articles read, and voted.

Mr. Vaughn. Your reading every article is needless, unless it be to see whether any one may be charged as treason, for if one may be objected against, so may all as no misdemeanors.

Fifth article, read.

Sir John Shaw. The old farmers had not the custom till others said they would give no more, and they had no reason to thank the Chancellor, because they gave more than others. And I declare upon my life I know no reward given him.

Sir Thomas Little. It appears by the farmers confession, that they had it 50,000l. under, besides time of payment, which was 30,000l. more.

Mr. Scym. You are at liberty to receive objections to the articles, but though others bad more, they were told they should not have it, and had about 1000l. each given them to bid no more.

Sixth, seventh, eighth and ninth articles read and voted.

The tenth.

Mr. Vaughn. This is an article of an high nature, Dunkirk was then as much a part of his Majesty dominions as Ireland, and if the sale of it be nothing, I know not what you would think of it if England should be sold, you lately debated whether on the first article he should be accused of treason, and found by the statute of 25th Edw. III. he could not, though it was absolute treason at common-law, and it's reported abroad that I said that the right of the parliament in declaring treason is taken away, which I did not, for there are treasons not mentioned in that statute. Therefore it provided that the Judges should not upon any one treason proceed to judge, until declared before the King and Parliament, and what is signified by it? If we think before the King, Lords, and Commons, that is impossible; for how can the Commons possibly declare before the King and Lords? nor was that the case, but this, that there is the ultimate power of determining what the law is in a doubtful case. In writs of error, let them pass from court to court, at last they come to the Lords, 24th of Edward III. If the Judges cannot resolve what the law is, it is to be brought thither, that is, where it is questionable, but that is not in the House of Commons, any more than in a writ of error: How then is the case here? If a question be whether a thing is treason or not, it shall be resolved where.

where the law useth to resolve, that is, before the King in Parliament, that is in the Lords house. Had the words of the act been these, there shall be no proceeding until resolved by the King in the Lords house, and suppose that clause taken away, That treason shall not be resolved, but suppose it shall not be declared otherwise, doth it follow it is taken away? No, if you charge treason which is not within the statute, it is another thing, but I said not, there is no treason at common law.

Mr. *Solicitor*. There was a great mischief in the declaring treason by Parliaments; for Mortimer was made a traitor for incroaching upon royal power, which every man, who incroacheth upon any power, doth. Hence the Commons petitioned the King to explain what incroaching upon royal power was, and when no answer could be gotten to it, 25th of Edward III. they petitioned it might be declared certainly, and so treasons were enumerated, and if the judges be in doubt, it is provided that the King and Parliament shall first declare it.

Declaration in Parliament, is a declaration before the King, Lords, and Commons. Would our ancestors leave what is to be resolved treason to the Lords, and themselves have no share in it? And Talbot being declared treason by the Lords, is said to be no treason by Judge Cook, because the Commons had no hand in it, there is no treason in common law, because there can be no treason, where there is no way to judge it, which is not at common law.

Mr. *Hough*. When the law is made uncertain the Lords must declare it, it appears there were treasons at common law not mentioned, 25th of Edward III. It is one thing for a matter to be treason before, and the Parliament declare it; another, for the Parliament to make a thing treason which was not.

Sir *William Lewis*. I desire to be resolved whether Dunkirk was annexed to England, because a bill to that end was carried, but not passed.

Mr. *Waller*. To shew that Dunkirk was annexed to England, consider we were passing a bill for 1200000l. But when we were making a preamble to the bill, we were to seek for reasons for giving the money, seeing we had no war, some said to keep Dunkirk, but we were told we should take heed of looking upon it as annexed unto the crown; but it was replied, Dunkirk was looked upon as a frontier town, and accordingly noted in the bill. Therefore the sale of it treason.

Mr. *Cowenry*. Had it been part of the crown of England, what needed a bill to make it so?

Mr. *Prynn*. It cannot be treason, because sold by the King's consent.

Mr. *Vaugh*. If the King agreed to it, doth it follow that he, who adviseth the King to a thing destructive to his kingdom and King, is not a traitor? If any part of the King's dominions may be alienated, especially when a Parliament is sitting, for they concurring, it may be alienated, by the same reason the King may alienate Ireland or England too without the Parliament. For by what act of Parliament doth the King hold Ireland or England? It is by acquisition; I say not Tangier, for that was part of his portion, and is his own; But Dunkirk would have been the kingdom's if not thus disposed of, and though it might have been alienated with the Parliament, it could no more without, than England or Ireland.

Mr. *Edward Henth*. The act of Parliament for annexing was not this Parliament, but of the convention, and came in thus; the King was pleased to tell me, that the Spanish Ambassador might press him to part with it, which he had no mind to do; therefore he would have a bill to annex

annex it to the crown, which shews it was the King's will to have it annexed, accordingly this Parliament passed it, and Dunkirk might have been as useful to Calais.

At length this article was passed by, without determining whether treason or not.

Eleventh, twelfth, thirteenth and fourteenth articles read and voted.

Fifteenth article read.

Lord *Vaugh.* I brought in this article, his betraying the King's counsels was to the French King during the war, and that in the secrecy of state, which was the occasion of the late mischiefs.

Sir *Thomas Osb.* That is direct adhering to the King's enemies, and if so, it is treason.

Mr. *Solicitor.* This must be treason if you have any inducement to believe it.

Sir *Robert How.* I have heard it from an eye-witness who told it me, and added that we are neither to be trusted nor dealt with, who were so betrayed.

Serjeant *Mayn.* Betraying the King's counsel to his enemies is, doubtless, treason. Corresponding is another thing. Betraying must be without the King's knowledge, otherwise it is but delivering the King's words to his enemies.

Sir *John Bramp.* Did this information come from a subject, or from one of the King's enemies?

Sir *Robert How.* I would not have brought you information from one of the King's enemies, nor did I ever converse with them during the war.

Coll. *Birch.* We cannot accuse of treason, except it be said, 'betraying the King's counsel, or corresponding with his enemies.'

Mr. *Vaugh.* You have declared that you have had inducement to impeach, and ought to put the question, whether on this article, he shall be impeached of treason.

Mr. *Solicitor.* To betray the King's counsel, taken generally, is not treason, for it may be to the King's friends; but to his enemies it is, if the article be so.

Lord *Vaugh.* Let it be put, betraying his Majesty's secret counsels to his enemies during the war.

Then the question was put whether these new words delivered by the said Lord *Vaugh.* should be added.

Carried in the affirmative.

Sir *John Hell.* Was this information given by an enemy or by a subject?

Mr. *Vaugh.* It must come from a foreigner, or you could not know it; may not the King have from a foreigner a discovery of treason against him? The end of questioning it must be to know the man, for it might as well be asked whether his beard be red or black.

Sir *Thomas Miers.* The words are discovered not betrayed, and discovering may be with the King's consent.

Lord *Vaugh.* Add the word betraying, for so I meant it.

Serj. *Mayn.* They who give the information say not they had it from more than one witness, which statute Edward VI. requires, and only one of them names the Earl of Clarendon.

Mr. *Seym.* This exception is proper to be made before the judges.

Then the question was put.

Whether to impeach of treason on this article.

Yeas, 161.

Noes, 69.

290.

Sir *Thomas List.* That an impeachment of treason and other crimes and misdemeanors be carried up to the Lords against him by Mr. *Seym.*

Serj. *Mayn.* For misdemeanor he may have counsel, not for treason: Therefore

to distinguish the charge, that he may have counsel.

Resolved, That a charge be carried up.

Resolved, That the Speaker and the whole house carry it.

Nov. 12. It being considered that if the Speaker go up with the charge, some dispute might arise about carrying the mace, and otherwise.

It was Resolved, That Mr. Seym. carry it.

Accordingly he went, where at the bar of the Lords house, the Lord-Keeper Bridgman being come to the bar to meet him, he delivered himself to this purpose.

My Lords,

THE Commons assembled in Parliament, having been informed of several traitorous practices, and other high crimes and misdemeanors committed by Edward Earl of Clarendon, a member of this honourable house, have commanded me to impeach him, and I do accordingly impeach him of High-Treason, and other crimes and misdemeanors in the name of the said Commons, and of all the Commons of England: And they have farther commanded me to desire your Lordships to sequester him from parliament, and to commit him to safe custody, and in convenient time they will exhibit articles against him.

Nov. 15. The Lords sent down to desire a conference in the Painted Chamber.

At which the Earl of Oxford delivered a paper in writing (without any debate) the contents whereof were to this effect.

The Lords have not committed the Earl of Clarendon, because the accusation is only of treason in general, without charging any thing in particular.

Mr. *Gerrard*. I had rather the house should lose the punishment of this man, (though a great offender) than that this house should lose its privilege: For if this

house may at no time impeach a Lord without giving in particular articles, it may fall out to be at a time (as in the Duke of B——'s case) where a great man by his interest with the King procured the dissolution of the Parliament, and then the accusation falls.

Mr. *Vaugh.* Either you can justify your proceedings, so as to satisfy the Lords what you have done, or you cannot; you must name a committee as well to consider what you are to do, if your reasons satisfy not, as to draw those reasons.

Mr. *Solicitor*. Without doubt this house was not mistaken in demanding that the party accused for treason should be committed, that is, that treason is worthy of commitment, and you can but find precedents that persons have been accused of treason, and thereupon have been committed: But the case is this, treason is an offence, for which bail cannot be taken; the Lords tell you not they will, or will not commit; but it is true, persons have been committed for treason, and persons accused of treason, Judges may commit, or not.

Consider this law. Let the crime be what it will, an imprisoning till the charge is given is but an imprisoning to security, not to punishment; otherwise the law is not just, and if the Judges of the King's Bench have a judgment of discretion, whether to commit or not, can we wonder that the Lords have not imprisoned, till they know the article, when they have judgments of discretion, though they knew it? You may find precedents, but it is not an argument it must always be so: But as the Judges have a latitude much more than the Lords, the impeachment from the Commons of England is properly the King's suit, for there is no treason but against him, and if the Judges may bail in that case, may not the Lords? But you are not told he shall be bailed, but they desire

to know what his crime is, and then you shall know their answer, the resolution seems reasonable, having gone no farther, I cannot except against it.

Sir Thomas Litt. The Long Parliament had some good precedents which we are not to cast away lest we smart for it.

Resolved, To resume the debate tomorrow.

Nov. 16. Mr. Vangb. The Lords do not say commitments should follow because treason is bailable by the King's Bench: it's true, the King's Bench bails for treasons, but how? If persons be brought thither for treason directly, there is no bail, but when a commitment is by the council-table for suspicion of treason, then if the matter fall not out to be what was expected, they give notice to take bail; else the great article of the great charter, namely, that justice should not be delayed, nor denied, would be to no purpose; and in such a case a man may be in prison for ever. On the other side, what is the case of committing for treason? When a person is committed by the council-table, they say they do no more but by special command of the King, and that is the ground of his committing, and were not this so, what would follow? Intelligence would be given of a treason discovered, wherein many might be concerned, and if they who commit, should commit with the treason, all the complices would escape; and therefore sometimes they make it treason-general. Then for the case, before you have gone up with a charge of treason generally, which is to the Lords a warrant sufficient for commitment, say they, we will know the particulars; then will not the same inconveniences follow, if other persons be concerned, and so the danger of all exposed upon the nicety.

If a business comes before this house, which concerns others, and may prove treason, if we go to the Lords (for we have not jurisdiction except in case of our pri-

villeges) but are not yet ready to bring up particulars, and desire the Lords to apprehend such persons, would it be reasonable for them to refuse it, there being no inconvenience like to follow the doing it, much the not doing it? I say not to commit them, and we not prosecute, for that is delay of justice.

Quæst. But why do the Lords refuse?

Ans. Though I have great respect to the Lords, yet to clear something in point of privilege, the Lords have the same privilege with us in point of speech, their members, &c. as they are essential to pass laws; but that great privilege which they often assume as Peers, is as the King is there present in the highest Court: How then will it fall out in respect of this privilege? If the King be there, there be many things which the Lords as Peers cannot pretend to, for the King hath often said there not only in passing bills, but in judgment. Had this charge then come before the King there, it had been reason if the King should have said, "I desire to know what this treason is," we must then have told it, because he, whom it concerned, required it; or if we desired commitment, he, who could release or pardon him, might say, "let him be bailed." The Lords indeed retain this privilege, but it is in the King's right, not as Peers.

Now we have carried a charge, if the Lords bail him, I know not what would follow, for no example can be given of it, and I think they will not do it, if the King do not direct it.

On the other side, I would be glad we might be no more troubled, than is necessary, because others are listening what we do, and think there is nothing in the case; Therefore I am not for delay, but satisfying others that what we have done is not barely for imprisoning the Earl of Clarendon, but for justice; and if you go this way, give the Lords the reasons why we sent

sent the charge as we did, and yet keep up their privileges, and declare so to them.

But then we must go up with more than that head, on which we resolved to impeach of treason, for your article must be so formed as to make it a charge fit to be answered for time and place, and that article hath something of that which must be penned so as to make it more certain, for the article goes but thus: That there was discovery and betraying of the King's counsels to his enemies, and if you leave it there, those who scruple doing any thing, because particular treason is not mentioned will say; you say he hath discovered and betrayed counsels to enemies, but as we trust you not what is treason, but we will know it; so we know not whom you mean by enemies; for we may think them not so, therefore appoint a committee to form articles.

Mr. *Sollicit.* It is a great mistake to say, That the power of the King's-bench to take bail for treason, is no other but what is asserted, as if the judges there had only power from Magna-Charta; when a man is committed upon suspicion of treason, and no prosecution follows, and the party bringing *Habeas Corpus*, the bench bails him, because he should not lie there eternally. It is not to be said the judges bail for treason; seeing no crime is produc'd: For when a man hath been accused of treason for coining false money and brought to the bar, the judges have bailed him not because they ought, but from that discretionary power wherewith the law trusts them, they may bail if they will, for no other judicature, but they, can bail in that case; for seeing imprisonment before trial is only that the prisoner may be forthcoming, if they see there is no danger of escaping, they may take bail, for he is a prisoner when bailed; and the bail is his keeper; but there are few cases of this kind, wherein they will bail, they have a fundamental power to do it, placed in them to preserve the rights of

the crown; and the Lords will not think themselves less trusted with the rights of the crown than the King's-bench. Yet though the Lords may bail, they will not exercise their discretion, when there is a probable truth in the impeachment; shall we then refuse this intimation from the Lords, who saying, because they have not a particular article of treason do not secure, seem to imply, that if they had, they would, though they might refuse. The right of bailing comes not from an imaginary apprehension of the King's sitting there, though some Kings have sat there in judicature, but from their inherent authority of being trusted with the right of the crown: Let us do then what becomes us, and not let the impeachment miscarry upon a misunderstanding, but draw up the article. But how is it possible to draw it as an article which you expect he should be imprisoned upon? for your impeachment is in the nature of an indictment, and must contain so much of certainty as to put him to plead, that so he may not demur.

How may it then be circumstantiated, so as that he may be put to plead; if you do it according to 25 Ed. 3. (for discovering the King's secrets to his enemies is within that statute.) The first part of the article is not pleadable, for we must shew how he adhered to the King's enemies, and we must add what the counsel was that he betrayed, else he will deny to plead, and say, I cannot avoid it: Therefore consider what kind of certainty this article must have to make him plead, for the other articles it's enough to say them without proving time or place, if the facts were after the act of oblivion; but in treason, the matter must appear in the indictment; for he hath liberty not only to plead not guilty, but to avoid it: Therefore prepare the article accordingly.

Mr. *Vaugh.* What is moved is to put you upon an impossible business, for an article presented from the Parliament needs not

not that certainty, as if it were to be tried at the King's-bench.

Sir Thomas Litt. It is not for the honour of this house to recede so easily from such a privilege, for besides, the Earl of Strafford's case, we have express precedents for, but none against us. We have heard that we must have no more impeachments, because they are dangerous and tend to rebellion. Consider the Archbishop of Canterbury's case, Finch, Ratcliff, and others in the Long Parliament, and we should not so easily part with them. William Delapool being commonly reported to be no true man, (which is a less charge than treason) desired he might acquit himself, and the Lords required no special matter before they imprisoned him, and afterward he was accused more specially.

Sir Rob. Aik. In the case of Anselm Archbishop of Canterbury, the Commons accused him, but the Lords did not commit him, and gave no other reason for it, but that he was a great man; and yet afterwards he was condemned as a traitor, though the King reduced his punishment only to be banishment. Though a privilege is much spoken of, yet I shall never be fond of any privilege which shall intrench upon my liberty as a subject.

Mr. Vaugh. I hear it objected, that as you charge a Lord generally, so may the Lords a Commoner, but that cannot be; for the Lords cannot cause a Commoner to be committed though for treason, without your consent: Therefore put a question, whether a committee shall be named to draw up reasons to justify what you have done.

Resolved, That the question shall be put.

Resolved, That a committee shall draw reasons.

November 18.

The Committee brought in their reasons.

First, What can or ought to be done by either House of Parliament is best known by the customs and proceedings of Parliament in former times; and it doth appear by example, that by the course of Parliaments the Lords have committed such persons as have been generally charged by the House of Commons for high treason, to safe custody, though the particular treason hath not been specified at the time of such charge.

Second, That a commitment for high treason in general, is a legal commitment, and if the party so committed bring his *Habeus Corpus*, and the cause of his commitment thereupon be returned for high treason generally; he may lawfully be remanded to prison by the judges upon that return.

Third, If before securing the person, the special matter of the treason should be alleged, it would be a ready course that all accomplices in the treason might make their escape, or quicken the execution of the treason intended, to secure themselves the better there.

Fourth, If the House of Peers should require the particular treason to be assigned before the party charged be secured, they leave the Commons uncertain and doubtful (and that from time to time) how particular they must make their charge to their Lordships satisfaction; before the offenders be put under any restraint.

Fifth, The Commons conceive, that if they should desire the Lords to secure a stranger, or native Commoner, upon the suspicion of treason, which the Commons had of him, and which was by them under examination to be evidenced to their Lordships in due time; their Lordships in justice for the safety of the King and people, would secure such person or persons, upon the desire of the Commons, and in such case there would be no difference between

a Lord

a Lord and a Commoner so desired to be secured.

Sixth. The proceedings of inferior courts, between the King and the subject, or subject and subject, and the discretion of judges in such courts is bounded and limited by the discretion of the Parliament which trusted them; and it is not left to the discretion of the judges in ordinary jurisdiction to give the King, or take from him inconvenient power for the subject, nor to dispense the law partially between subject and subject for malice or affection; but the discretion of the Parliament, which is the whole public, comprehending the King, Lords and Commons (for the King's presence is supposed to be in the Lord's house) is, and ought to be unconfined for the safety and preservation of the whole, which is itself.

It cannot be malicious to a part of itself, nor affect more power than already it hath, which is absolute over itself and part, and may therefore do for preservation of itself whatsoever is not repugnant to natural justice.

Mr. Prynn. I like not the first reason, because it cannot be called a custom, where only one Parliament hath done it.

Mr. Swinf. The great strength lies upon this first reason, and is like to be a precedent; for exact precedents I find none, except that of Michael Delapool, and in the Long Parliament: but consider the reason why there was no express precedent before, and what was the custom of Parliaments before. The Parliament was wont to proceed formerly by bill, and thus far that proceeding makes against the Lords now, and for committing the party accused; for then the proceedings upon treason were by common-law, and because the judges could not proceed, therefore the Parliament went by bill, and it cannot be supposed that the parties were at liberty all that while.

Second, third, fourth, and fifth reasons voted, sixth read.

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Mr. Solicit. I am against this reason, not as a reason, but unnecessary; for if the former reason satisfy not, this will not, because it supposeth things not in question.

Our debate must at last end in this question, betwixt privilege of Parliament and former proceedings; and there being no privilege in case of treason, why should not former proceedings sway? Except we call that treason which is not, for otherwise no privilege will help.

Therefore add this to your reason, That there is no privilege for treason, and the Lords ought not to think that the Commons will call that treason which is not, or if they do, the Lords may by a speedy trial determine it.

Resolved, "That a conference be desired with the Lords, and the reasons carried up."

November 21.

The Lords sent down to desire a conference about the subject matter of the last conference. But the Commons doubting that if they should consent to it, the Lords might afterwards refuse a free conference, because the business in dispute concerns judicature, which belongs to the Lords, and so the impeachment generally falls.

Resolved, "To send an answer by messengers of their own, and accordingly did, with order to acquaint the Lords how far they had proceeded, and they expected they should rather have desired a free conference."

November 23.

The debate about the freedom of speech in Parliament was resumed.

And the report read of proceeding about Sir John Elliot, Mr. Holes, &c. 5 Car. 1.

Mr. Solicit. If you are satisfied that the judgment passed upon them was illegal, two ways you have to be safe; by taking

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notice

notice of that judgment, giving your opinion upon it, and carrying it up to the Lords, that judgment will be utterly damned, else you may proceed by act, but consider then the consequence: For if you go by act, you bound the liberty of speech, unless in penning it you prevent it, but an unknown limitation is better than bounding, for an act itself is subject to exposition, but your vote, and the Lords concurrence is not.

Mr. Vaugh. It is not safe for you to circumscribe privileges, therefore that must be done which may take away what destroys them.

The laws and rights of this kingdom are rights by common law, or Act of Parliament; what is an Act of Parliament, may be repealed by Parliament; what is common law may be altered by Parliament, and whatever is both, may be altered by a new law; and how is it possible to do one or the other, without liberty to speak about it? And how can there be any inconvenience about freedom of speech, about any thing which cannot be a law, without passing King, Lords and Commons.

Then it being moved to put the question for confirming that report.

And it being replied that some passages in that business, viz. about keeping the Speaker in the chair were not warrantable, and so not to be joined in the question with the rest.

Mr. Vaugh. That business which is so much talked of, and condemned, I shall state to you.

The House is to adjourn itself, though sometimes the King adviseth them to adjourn themselves, (as then he did) but the adjournment is always made by a question, and without it the Speaker cannot leave the chair.

The Speaker acquainting the House then with the King's message, Sir John Elliot stood up to speak, but the Speaker would

not hear him, but was going to leave the chair, whereupon some said, if you go out without a question the Parliament is dissolved, upon which he was leaving the chair; some kept him, and told him, if this be a House, you, as Speaker, have no place in it but the chair; and this was all the irregularity in that business so much talk'd of.

Resolved, "That the judgment given against Sir John Elliot, &c. 5 Car. was an illegal judgment, and against the freedom and privilege of Parliament."

The Lords sent for a present conference, after which report was made that the Lords had voted the Commons denying them a conference lately, was contrary to the course of Parliamentary proceedings, and gave reasons why it was not yet time for a free conference.

November 25.

After debate whereof, it was resolved to grant them that the Commons agreed to the conference formerly desired.

At which the Lords declared that they had considered of the precedents and reasons formerly sent them by the Commons, but were not satisfied to secure the Earl of Clarendon, or to sequester him from Parliament, until some special reason be assigned.

November 28.

The Commons sent to the Lords to desire a free conference upon the matter of the last conference.

To which the Lords concurring, *Mr. Vaug.* *Sir Rob. How.* *Sir Tho. Littl.* and others were appointed to manage it, who went up immediately to that end.

Mr. Vaug. made report of the conference with the Lords yesterday to the purpose following.

The Lords told us, "That no precedent can be against the law.

We

We answered,

If that can be made good, we shall press precedents no more : But what they most stood upon was the Petition of Right, where it is provided that none shall be committed without special cause, whereby the party may answer according to the law, thence they infer that our proceedings are against law ; because a general charge is against the Petition of Right.

Commons. The case of the Petition of Right, rightly stated, will clear this, which was this : Some persons were committed by no other warrant, but the King's special command, they bring their *Habeus Corpus* to the King's-bench to know the cause ; this cause was returned by the judges, that they could not bail a man, when so committed, because they knew not the cause, nor had any way to bring him to his trial.

Then the Petition of Right, provides that the cause should be returned, whereby the crime might appear, and that before and after the Petition of Right to this day, if upon bringing a *Habeus Corpus*, it be returned that the party is imprisoned for treason, the judges ought to remand, unless there be some special cause to make them take bail. So that the Petition of Right was against them, for they say, a man ought not to be imprisoned upon a general charge, because it is against the Petition of Right : We say it is not against the Petition of Right, because the judge may remand the party, if there be not special cause.

Then the Lords said, " That the reason why the judges remanded in that case was, because the party committed knew it was for treason : Therefore they re-committed."

We owned it, because it was the rule for the judges to proceed by, but that was no rule for proceeding of Parliament ; for as a magistrate commits for treason, and is supposed to be acquainted with it ; so also is he with the probability upon the proof :

But the Lords insist not now upon that, but specific treason, and if the course of Parliament so much varied in such cases, that was no concluding proof, why they should have special treason.. And for the other part,

That upon the return, there should be a cause returned, that so the party might answer ; for when a return is made, if the cause be such as that the party ought not to be imprisoned, the judges free him ; otherwise they leave him to come to his trial.

Then to the precedent about the Earl of Strafford, they replied, That it was made in bad times. And we answered, That as good laws were made before, in and after that time as any other ; and if the Lords then might make such laws, we could not see, why it should be a good time to make laws, and no good time to administer to persons the laws already made.

Farther, to their objection, that in the time whence those precedents were brought, there was a face of war. We answered, That could not alter the case, for the law calls no time a time of war, whilst the courts of justice have freedom, as they had when Strafford, Finch, Canterbury and Ratcliff were impeached : And it was strange that in the Parliament-house there should be such a consternation as to make their proceedings invalid, when in other courts there were none : Besides, in Holland for many years there was a constant scene of war, and can we imagine that there was not justice done at that time.

Then they pressed precedents against ours ; one 14 Ed. 2. against the Spencers, where a great man moved the King to commit one of them, and the King answered, " It could not be unless cause was shewed." We replied, This was a precedent like that, a man was committed, because he was committed ;, for there was no allegation of treason.

Second.

Second precedent was 38 Hen. 8. against Lord Stanhope, the Commons moved the King to imprison him, and the King answered, "He would consider of it." We answered, that was no denial, but a thing usual with the King, and that motion was to the King himself, which differs from this case, for that was not alledged to be treason: Besides, had it been treason, it was against the King himself, and being an offence against himself, he might (if he would) not imprison, because he may discharge a man, or pardon him, tho' for treason; but this case is not so, because the Lords Justice is but ministered to the King.

21 R. 2. Arundell Archbishop of Canterbury, who as they said was impeached of treason, but not committed.

Answer. The case was this. There was a commission issued out by Ric. 2. That that Bishop and others should regulate what was amiss by evil government, and the King was offended at the granting of it, and at Nottingham sent for the judges, and charged them upon their allegiance to give true answer to what questions he should ask them; and the first question was, "Whether that commission so granted, was not invading his prerogative?" They answered "Yes." Then he asked "how they ought to be punished, who procured it?" They answered, "as traitors, In the 21 the bishop is charged by the Commons, and the treason alledged is. That he had procured himself to be put in the commission.

This being the case, we said, that if a fact be called treason, which afterwards appears to be none, there could be no commitment. For if a man call another man's coming into his ground treason, it falls of itself; therefore the bishop was not committed.

The Lords said farther, That all those articles were declared to be treason, which before could not possibly be treason to commit a man, because the nature of them

must be treason at common-law, and till these treasons were declared, which was not till 21 Ed. 3. they were not treason so as to imprison, or try a man for them.

We replied, All that Parliament was repealed, yet the precedent was the more authentic. But I think that Lord (it was the Earl of Bridgewater) understood not what he said, at least I did not.

Then about the Earl of Strafford's precedent, the Lord's said, that the very impeachment was taken away by the Act of this Parliament, because the impeachment is recited in it. Namely, whereas the Earl of Strafford was impeached, &c. But every clause in that act of attainder is taken away now, therefore the impeachment; and you cannot make use of any part of it.

We replied, It is true, the act of attainder is taken away, but the very act of repeal doth recite that very clause (whereas Thomas Earl of Strafford was impeached, &c.) and the act cannot take away any thing which strengthens its own supposition.

Then the Lords said, that they should be willing to comply with the Commons, but that they must be tender of their own judicial proceedings.

Commons. It's true they ought, and we supposed that the Lords might be jealous that we should intrench on their power; but the Commons were so far from that, that they thought the judicial power better lodged with them than in the Commons themselves could be; but we would open the objection.

Their Lordships being the Judges in this case might think, that for the Commons to take upon them to know what was treason, would be an assuming to themselves what was only proper to the Lords, and that it was so now in charging the Earl of Clarendon generally.

Lords. The objection is right.

Commons.

Commons. For our knowing treason, we have many among us who are Justices of Peace, trusted by law to know and commit (and if the Parliament be not sitting) even to commit a Peer himself for treason, and the knowing what is treason is so far from being improper to the House of Commons, that every man in the nation is bound to know it; for was it ever known, that ignorance of the law could ever excuse a man from breaking the law? Laws are made to be known by subjects, especially those which concern the King; and unless they could find a reason, why the Parliament embodied should be more ignorant than particular persons, the present case must be clear. That the jealousy of the Lords arose from a fallacy thus, the Lords have judicial power concerning treason, and must of necessity know it; the Commons have no judicial power over it, therefore cannot know it; that is, because the Commons know what law is, therefore they have judicial power over law. To this was not any thing replied.

Farther, We said that because they insisted upon to specify treason, because by committing upon a general, they might wrong the party by committing him without cause, and because they themselves were not informed in their consciences what they did: they would do well to consider the many inconveniencies which might follow; if the charge of treason was not general, but particular; and suppose it was special, their Lordships would know no more by it. For suppose a man impeached for counterfeiting the great seal, which is express treason, and he may be impeached for it, yet neither their Lordships nor the party could have any advantage by that specification, because there might be as many questions what is counterfeiting the great seal, or what is treason.

For Instance. One Leak, a Clerk in Chancery, intending to forge a patent, puts to-

gether two pieces of parchment, and had fitted them, and put them together with mouth-glew, that they appeared as one: then a grant was written upon the outmost, and a seal affixed, so that the great seal is put to a true thing; then he cuts off the edges of the parchment, so as to sever them, takes off the written one, and leaves the seal on the blank, then forgeth the grant and makes use of it. This was questioned before the Judges, whether 'twas treason or not, that is, whether counterfeiting the great seal or not? If it were, it was treason, otherwise not. They resolved, it was not counterfeiting the great seal, and so not, but misprison. And if it had been treason, they resolved, that an indictment had been enough to impeach him. Then suppose you have such an impeachment before you for counterfeiting the great seal, you have special treason, and imprison him; but when it is brought to question, it appears not to be treason, therefore he is wrong imprisoned: and if your Lordships will examine what knowledge you have of this fact, you have no more than if it had been a general treason.

Lords. There is a case put there, as we are content to take a special treason, but expect not the proof as there it was.

Commons. If it were a case put, so is your Lordships reply, for it was put *ex concessio*, because you agreed that if the treason was special, the party was to be committed, and this case was to shew their Lordships, they were in no better case then, than if the treason were general.

But the Lords still pressing that the impeachment itself of the Earl of Strafford was repealed in the Act about him.

Commons. We reply'd, one part of the Act ought to be severed from the other, and that which is without exception shall stand, though the other be taken away: For, suppose a man prosecutes in a Court of Justice, for what he apprehends to be

Q q q

his

his right, and yet the cause goes against him, and he hath no effect of his suit; afterward the party (being an evil minded man, and thinking to reach his ends) forgeth a deed, or suborns witnesses, and then begins a suit in some other Court, and by those ways attains his ends. Then a bill comes before this Parliament to reverse the judgment, reciting that such a person hath been a suborner of witnesses, &c. so, and so, and therefore the judgment is made void; certainly tho' this person is named to be an evil-minded person, yet this lays no blemish on his first proceedings. So that it appears by the Act, that the proceedings against the Earl of Strafford were legal at first, if those afterwards, when the times became tumultuous, were not, it is not to be applied to what was well done and legal: Then we told them that we had pressed them with four precedents, and to three of them nothing was replied.

Lords. They answered, the reason why my Lord Finch was committed, was because of his flight.

Commons. He was fled before the impeachment; but it was ordered, That he should be committed when found.

Then we told them, That we must report to them, that be the treason what it would, we could not go to the Lords to have it punished without that disadvantage, which the publishing the treason beforehand would expose us to by making of witnesses, escaping of parties, and the like; then bid them consider, whether if we should lay before them a treason in every thing circumstanced as Gun-Powder-Treason, they would not imprison the party till the whole matter was opened.

Lords. They answered to hear that case put, for in matter of state, other courses are to be taken, and they could see no inconveniency in publishing that to the Lords, which must be published before 400 in the House of Commons.

Commons. The Commons may proceed with what secrecy or openness they please, and the Lords are not to take notice of their proceedings, whether open or secret.

Farther, That by a matter of state must be understood, when a Parliament is not sitting, and we know not whither to resort, but when a Parliament is particularly called to prevent the mischiefs threatening the kingdom, if that be not capable of remedying, no other council could, or we are not bound to resort to that, we are excluded from that to which we ought to resort.

Lords. That the Lords bid us take heed of the liberty of the subjects, to which they are now fain to have regard, bidding us consider the Bishop of Canterbury's long imprisonment, without knowing the cause, and they must satisfy their consciences, lest they should commit for treason, and it not prov'd so.

Commons. It appears not that the Bishop of Canterbury should have lain less time, had the impeachment been special; and for the liberty of the subject, we know not how a subject should have more liberty by special matter, than general; special being but adding a formal title, and the subject goes to prison, as well for the one as the other.

For their consciences. Suppose a person accused generally, they are then to know whether it be treason, and is not it as much that they commit an innocent person? So as if the matter was special.

December 2.

The Lords sent down a message to the Commons by two Judges to this effect, "That upon the report made to them of the last free conference, they are not satisfied to commit or sequester from Parliament the Earl of Clarendon without the particular treason

treason be mentioned or assigned;" who being withdrawn.

Lord *Tarring*. (General M——cks son) Moved not to part with any privileges of the Commons of England, but adhere to the general impeachment.

Sir *Rob. How*. The matter before us is of as great concernment as ever came before us, if there should be malice supposed in a nation against itself; it might be exercised by giving a particular charge, as well as a general, many of the Lords are convinced by the reasons we gave; and concur, thinking our precedents good, and have entered their protestation in the Lords house, asserting the rights of the Commons of England to impeach generally: So that (excepting the spiritual Lords) I think I may say the major part of the Lords are for us; and should we give up this, we may be wrested out of all right, and the Commons have no way to proceed to an impeachment, but some men to be so great, as not to be fairly reached. Therefore adhere.

Mr. *Wall*. The Lords are a noble estate, but whatever the matter is, they have of late some advice given them, which makes them proceed as they never did yet; for scarce any thing happens betwixt us, but they inroach upon us. The militia is now as burthensome to the fifty pound man in the country, almost as all other taxes, and the Lords have gotten this advantage of us, that they touch not the burthen of it with their finger: So in time of the plague, the Commons must be shut up, but not they, insomuch that a good act provided to that purpose passed not; we impeached the Lord Mordant, and could not bring him to the bar (though formerly I have known an Earl and a Lord brought thither) you desired a free conference about it, but could not obtain one to this day. Rome was at first modest, and only meddled with spirituals, but afterwards concerned them-

selves so much with other matters, that every thing was almost made to be in *Ordine ad Spiritualia*, and many kingdoms thereupon break from them. The Lords now insist upon one thing, because they say 'tis in order to their judicature, perhaps hereafter they will tell us we must come to them on our knees, because it is in order to their judgment. Consider therefore whether there be any hope of giving them satisfaction; then whether you will adhere, and what you will do afterwards; for the present my motion is to adhere.

Mr. *Vaugh*. It is truly said, the business before you seems to be as great as hath been in Parliament; many of the consequences being invisible, therefore before you resolve what to do take the whole matter before you.

The difference between the Lords and us, is upon a general impeachment of treason; the Lords after a free conference, say, they will not commit unless special treason be mentioned or assigned, those whom you employed to manage the conference were very unwilling to differ with them, but it seems it hath produced nothing, and I have nothing to make me believe, but that the reason is, that the Lords were resolved (say what we would) not to be satisfied; for I know nothing which they offered, but it was fully answered, nor any thing left undone to satisfy them if they would have been satisfied; what I have to say now is to clear something which the Lords may make much found of.

When we urged precedents, and made them our principal reason, we told them, the way to decide what was in difference betwixt the houses, is, the usage of Parliaments; but to our precedents we received no full answer.

Then the Lords used this reason, namely, that they cared not for precedents, because it was against the express law of the land.

I answered

I answered them, we would join with them, if they could shew law against it, and expected what they would answer, but heard nothing: Much discourse there was, without application, of the great charter, and of a statute of 28th of Edw. III. but not applied; so that I thought law in a Lord's mouth, was like a sword in a lady's hand, the sword might be there, but when it comes to cut, it would be awkward and useless.

But I hear since, that their meaning was this (which must be cleared by mentioning some laws) that by *Magna Charta*, it is provided, "That no man shall be taken or imprisoned, or condemned, but by the law;" and thence they infer, That no man may be imprisoned, but it must be by his Peers, or by the law of the land.

Again, 5th of Edw. III. No woman shall be attached upon accusation, or be adjudged of life or limb, but according to the law.

25th of Edw. III. No man shall be taken by a petition to the King or his council, unless by indictment of lawful people, or by process of writ at common law, and (say they) this case is to none of these.

28th of Edw. III. No man shall be imprisoned without due process according to the old law of the land: But this case being neither by presentment nor indictment, the Lords would not stand upon our precedents, but relied on this, as if it were enough in bar of all our precedents.

Therefore to open this, and the danger of the consequence, there are in the land many different laws, and proceedings in these laws, and imprisonment upon them; and yet not one of them by presentment, indictment, or trial by peers, though the Lords thought this was the law and there was no other.

1. It is known that the crown-law, or prerogative, is distinct law from that between party and party.

2. There is the law and custom of Parliament, called a law, *ab omnibus querenda, a multis ignorata, & a paucis cognita*.

3. Then the canon-law, (and it is much the Bishops forgot that) and there is nothing in that law, more than standing in a white sheet, which proceeds not by indictment or presentment, yet there is imprisonment even in that law.

4. There is the law of admiralty, and the articles of *Oleron*, where there is proceedings of another nature, and by imprisonment.

5. The law of merchants, or of the staple.

6. The law of arms, where is imprisonment and death, and yet different proceedings from the common-law in the great charter: Now no man thinks that all those courses of proceedings are taken away by the common law, and it is gross ignorance to think it.

7. The law of the forrest, which is most different: so that to urge *Magna Charta* to this purpose, as if all proceedings in those cases must be according to the common-law, is absurd.

Then there are divers writs in the Register.

One, When a man hath received the King's money to serve him, and went not, then there is a writ to arrest him upon a certificate from the captain under whom he was to serve.

Then the ordinary writ, which belongs to the law ecclesiastic, *de excommunicato capiendo*.

Another, *de Apostata Capiendo*, to recover a regular run away from his convent.

Another, called *ne exeat Regno*, to imprison a man, who will not give security not to go out of the kingdom, and this is not traversable any where, because it suggests that he will machinate somewhat hurtful to the kingdom, and upon that suggestion he is imprisoned.

Another, when a man hath a leprosy.

Another,

Another, to burn hereticks, which concern'd the bishops also, if they had pleas'd to think of it.

These proceedings are no way agreeable to those mentioned in the common-law.

Then consider how this resolution of the Lords strikes at the law of Parliaments.

1. It is certain that all imprisonment by Parliament is not by presentment, indictment, &c. So that by this means that power is taken away.

2. Contempt against parliamentary authority, whosoever he is to appear before them, and disobeys them, they may imprison him in the Tower, and yet it is not against Magna Charta.

Whither therefore tends this?

The conclusion must be, that no impeachment by the Commons must go on, unless it be by presentment, and so there is an end of all that, for which the Parliament is principally call'd, unless we are part of those 500 contemptible ones, who are only fit to give money: That may be reserved for us, but nothing else; tho' 23 Ed. 3. saith, "for redress of grievances in the kingdom a Parliament shall be called every year. I would know which way we should redress abuses, if we are so far from remedying in Parliament, that we must be shut out to the common courses in other courts?

Obj. The Lords may say, if you find the statutes broken, and short, you shall have new.

Ans. And when these new ones are broken, then we shall have a remedy; so rise up remedy, and go to the remedy, *ad infinitum*, for there is no more reason to think that a second law shall be maintained more than the first, and what way a mischief shall be redressed, other than by Parliament, I know not.

So that by this resolution of the Lords, and denying to commit upon this ground

(for they shew'd no other) every thing for which a Parliament is useful is denied us.

After all this come to the very case.

If a treason be committed, and the same is that *A. B.* is guilty of it, it is lawful to apprehend him for it. If a *bue* and *cry*, pursue a man, tho' he be not of evil fame, yet he may lawfully be imprisoned: If it proves false, he hath his remedy; but that obstructs not the law to bring him to trial. Any watchman may arrest a night-walker, and hath a warrant in law for it, and this is as good process in law, as any original writ.

And after all this, consider with what kind of colour, when there are weighty reasons why we should not mention special treason, and that mentioning it generally, answers the petition of right, the whole Commons of England (who are in no degree represented by the Lords, they only represent their own persons) should be denied the securing a person impeached, unless a particular charge be given, how prejudicial soever to the kingdom.

Another thing, there is no right which a man hath in this land, or any part of the world, but his right is such, that if it be kept from him, he hath a means to come to it, otherways it is *damnum sine injuria*; for where the law gives no remedy, there is but a supposition of right: By the same measure it will follow, that there is no civil wrong can be done to any man, but the law provides a remedy, if that wrong be done; and if by the law there is no remedy, it is no wrong, consider then this case.

There are in this kingdom in the civil state of it, three estates, which the King hath then in making laws: There are three estates, whereof the King is principal; sometimes they are mentioned as the King's three estates, and he none of them: The estates in general are, the Commons of the kingdom, (who are perfectly represented

in this House) the Lords another, and the King another; and these are such, that there is no petitory action, nor the laws directed to any one of them, but the laws you make, are to distribute justice in other courts.

For instance, If all the Commons of England (who are one of the estates) should accuse one of themselves, the party can have no wrong, because the Parliament can have no action brought against them, nor can they be supposed to do any thing for malice.

It is the same between the body of the Lords and Commons; and there is no law either to vindicate the one or the other; but they stand as if there were no communicable law betwixt them; but the measure between them is that which is good for the whole; for they are the makers of the laws for others, but no laws can be fancied to reach the whole of the Commons, or of the Lords.

So that 'tis easily to be seen, how it hath been put upon us; so that now we are in such a case, we know not to what end we shall proceed upon this or any other impeachment; for by this judicial power, you shall be excluded from any proceedings by laws of Parliaments, and so you take away the whole right of the kingdom.

Quest. But now what shall you do?

Ans. I see many inconveniencies which may happen both ways, but I see so many this way, that if any man gave such counsel as is charged upon the Earl of Clarendon, it is not so dangerous as the case before you; for the inconveniencies attending that counsel would quickly shew itself by the misery following: But this is a small thing begun with, which, like a canker, may eat till it be incurable, and that is as absolutely justifiable as this.

And now I have said this, I am perplexed what to say more, for all can bear

me witness; what respect I have endeavoured to preserve to the House of Peers, but I am so sensible of this, that though I cannot forget my respect to them, yet I must lament the condition into which they have brought themselves first, and us next, for they cannot think to avoid it.

The House of Peers is but a new stile, called so, as jurors are called peers, from the word *par*; for every commoner hath his peers as Lords have; and the whole stile formerly was Archbishops, Bishops, Dukes, &c. But *pares regni* is a new stile. It is called the Upper House, and is to be looked upon with reverence. The Lords have a jurisdiction; but in this case, I must be plain, their granted jurisdiction ariseth from the House of Commons; if you impeach not there, your judicial power will be very little. If a Lord be to be tried for treason, the Lords are but his jurors; and though they try him upon honour, not upon oath, yet they are no more his triers, than as out of Parliament. The Judge of treason in the Lords House, is constituted by the King, as a Lord High Steward, and is no other Judge, therefore I know not the judicature they speak so much of.

There is another for writs of error, which are there determined, but the jurisdiction of that is, very little, for the inconveniency of the Lords determining what could not be determined in other courts, is so found out 25th of Eliz. They are to be brought first into the Exchequer Chamber.

There is another way when persons carry complaints to the Lords, which is a question, for commoners ought not to carry complaints there, except in some cases from Chancery; therefore this matter of jurisdiction, which they talk of, is not such a wonderful thing as they would make it.

Therefore whatever we shall do after it, your rights being so much concerned, that you know not where the stay will be, it is necessary

necessary that you make a committee to draw up a protestation to be made by this House concerning this matter, the invasion of your right in it, and the danger to the kingdom by it.

Mr. Colem. The Lords say, That committing upon a general impeachment is against law, and I think it will appear so; I deny not, but a *mittimus* without special cause is legal, and grounded upon the Petition of Right, the reason of which is to secure men against commitment by a special warrant, and a Judge ought not to discharge where treason is alledged, but in this case it is different: The Judges cannot discharge a man committed after examination, but the Lords ought not to commit a man, except there be particular treason.

If I come before a Justice of Peace, and say, I accuse this man of treason, will any wise man commit him? He makes his warrant indeed, but he that accuseth must go farther and make it more particular, and the special matter must appear before he commits, and this is the present case.

The Common Law is, That no man ought to be committed without particular cause; because no man can commit in capital matters, without taking examination before-hand, otherwise no man can justify a commitment: Therefore I am not satisfied that the Lords had not reason to deny. The Commons are in the nature of a Grand Jury to present, but the Lords are the Judges: Commitment is not the judgment, but in order to it, and the Lords have a discretionary power in the case: The Lords say not that they will not commit, but that they are not satisfied to do it without special matter, therefore we ought to lend it up.

Sir Rab. How. I have attended the reasons given against making a protestation, and whatever is said, is but levelling a House of Commons with every private accuser; a Justice of Peace (it is said) must

have evidence before he commit, and this House has had inducements to impeach, and may not a House of Commons judge what is treason as well as a Justice of Peace?

The inconveniences and dangers laid before you, if you proceed, are nothing in comparison of those on the other side.

Had the Lords imprisoned, they had before this had the particular charge, and the protestation is not to stop it, but to make way for it some other way; for it will resolve into a remonstrance, by which you may give the nation an account of your proceedings to come to a trial of this business.

Mr. Vaugh. By the protestation spoken of, is meant to preserve the rights of this House upon the whole matter, and to give the reasons of your proceedings.

Sir Tho. Meers. What is said, not being explained; I know not what is meant by the protestation, if it be but to enter it into our books, I am not against it; if it be an appeal to the nation, pray consider what you do.

Mr. Vaugh. This way of protestation differs from entering in our books, but the best way is to draw it up, and to bring it to you, and then any man may take exceptions against it; for the meaning is, that this House claims its rights.

Mr. Garraw. First make your protestation, and then appeal to the King.

Mr. Vaugh. None can surmise that you mean an appeal to the people by what is moved, for what is done, must be done to some part of the Parliament; the King, Lords, or yourselves: And they who speak of it (if it were done with evil intent) deserve to be called to the bar; when it is brought before you for your approbation, you may either retain, or reject it.

Sir Wall. Young. I desire that the House may know before hand to whom they are to

to remonstrate, and on what ground, and therefore to adjourn their debate now.

Mr. Trev. What appeal you make ought to be to the King, but bring it in hither and give it what name you please.

Sir Rob. Atk. As I would be tender of your privileges, so, of giving offence to the Lords, therefore we shall endeavour to be unanimous in this House; a protestation is named, I am a stranger to it, and would understand clearly what it is before we do it; that it is a course warranted by precedents and proceedings of Parliaments, considering what an effect it hath had in late times, therefore we may do well to adjourn the debate and consider of it.

Sir Tho. Lit. This protestation will be like that in the Lord Maynard's case, but somewhat longer, and ought to go no farther than to one of the estates, and be kept within the walls.

Mr. Swinf. You sent up a charge to the Lords in general, desiring that the Earl of Clarendon should be secured, and in convenient time you would send up articles; from that time it hath not been done, and the Lords have passed several votes about it since, but you have not passed one.

First they voted, that they had not complied with your desires for want of particular treason; then you give them reasons, they are not satisfied with them; then a free conference, they are still unsatisfied; and all this while you have not come to any resolution; so that till you come to a vote, no man knows but that you are satisfied with their answer; for when the matter of the protestation is brought in, we shall not be ready for it till we have resolved, that what the Lords insist on, is an obstruction of justice, and you cannot agree with them without great inconvenience to the nation; Therefore put a question, "That the Lords, not having agreed to secure the Earl of Clarendon upon the general impeachment, have obstructed the public justice of the

kingdom in proceedings of Parliament, and is of dangerous consequence:" This is necessary, because the Lords have heard nothing from you, but endeavour to satisfy them.

Sir John Good. This question will be a greater accusation of the whole House of Lords, than the other is of the Earl of Clarendon. If you will go by way of protestation, and keep it within your own walls, I like it better than this question.

Sir Rob. How. The putting this question is no charge upon the House of Lords; and therefore if that gentleman thinks it so great an one, sure he thinks the charge against the Earl of Clarendon to be a very small one. Is there any obstruction to justice? If not, why do we not comply? If there be, we cannot it seems complain without charging the Lords. Keeping it within your own walls, is but like a man when he is alone, muttering arguments to himself, and commending himself for it. If you meet with any obstructions, pray first put the question, whether you are obstructed.

Sir Rob. Atk. It is no light matter to charge the Lords with obstructing justice; therefore the thing being new, pray adjourn it till to-morrow, that we may be more of one mind.

Then the question was stated, namely,

That the Lords not having complied with the desire of the Commons in committing the Earl of Clarendon, and sequestering him from Parliament upon the impeachment from this House, is an obstruction to the public justice of the kingdom, and is a precedent of evil and dangerous consequence.

Resolved, That the question be put,

And being put, resolved in the affirmative.

Resolved, That a committee be appointed to draw up a declaration to vindicate the proceedings of this House.

Decem-

December 3.

A message from the Lords by two judges, that they have received a large petition from the Earl of Clarendon, which intimates that he is withdrawn.

Sir *Tho. Tompk.* Moved to take care to get the sea-ports stoppt.

Sir *Tho. Lit.* I believe he is now past stopping, but we should do it, though it have no effect; lest it look as though we would have him escape.

Sir *Rob. How.* The Lords seem now mistaken in their opinion at the conference they said there was no fear of his running away; and in our House it hath been jested that he was not like to ride post. Besides the expression in the message is (withdrawn) which may be an inward chamber, therefore it is fit to desire to see the petition, and command some members to prepare something to vindicate yourselves in discharge of your duty.

Mr. *Seym.* You cannot take notice to the Lords of the petition, unless they think good to communicate it to you, but make the declaration.

Mr. *Vaugh.* I look upon what the Lords say as doubtful, therefore beware lest you do something misbecoming you. They only say, that he is withdrawn, but not what is his petition; for the saying that he is withdrawn, is not the matter of a petition. Perhaps he is gone into the country, the message seems light, and you are to take no notice of it. If it be of moment, and they think us concerned, they should let us know it; and I cannot think so of the Lords, that they would use that word, if he were fled; therefore send a message, to know whether fled or withdrawn.

Mr. *Sol. Gen.* When a delinquent signifies to his judges, that he is withdrawn, it cannot signify any thing, but that he is withdrawn from their judgment. None but a madman will tell them that he is fled,

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fearing what may follow; it would be well if their care would prevent his flying, but you cannot answer it, if you hear they do nothing, and so seem to say, fare him well).

Upon all which motions, Ordered,

That Sir *Tho. Clifford*, (comptroller of the King's household) be sent to the King, to desire the ports may be stoppt.

December 4.

The Lord *Fitzharding* makes report from the King, that the message for stopping the ports being delivered him, he had taken care accordingly.

A message from the Lords to desire a speedy conference:

From which Mr. *Solicitor* reports.

We attended the Lords at the conference, which was delivered by the Duke of Buck, who said to this purpose:

That the Lords had commanded him to deliver to us that scandalous and seditious paper sent from the Earl of Clarendon, desiring us to present it to you; and to desire you in convenient time to send it to them again, for it had a stile which they were in love with, and desired to keep it.

Which said paper was read, and is as follows, viz.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled, the humble Petition and Address of Edward Earl of Clarendon.

May it please your Lordships,

I Cannot express the unsupportable trouble and grief of mind, I sustain under the apprehension of being misrepresented to you Lordships, and when I hear how much of your Lordships time hath been spent upon the mention of me, as it is attended with more public consequences, and of the differences

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ferences of opinion which have already, or may probably arise between your Lordships and the Honourable House of Commons; whereby the great and weighty affairs of the kingdom may be obstructed in the time of so general a dissatisfaction.

I am very unfortunate to find myself to suffer so much under two very disadvantageous reflections, which are in no degree applicable to me.

The first from the greatness of my estate and fortune, collected and made in so few years, which if it be proportionable to what is reported, may very reasonably cause my integrity to be suspected.

The second, That I have been the sole manager and chief minister in all the transactions of state since the King's return into England, to August last, and therefore that all miscarriages and misfortunes ought to be imputed to me and my counsels.

Concerning my estate, your Lordships will not believe, that after malice and envy, hath been so inquisitive and so sharp sighted, I will offer any thing to your Lordships, but what is exactly true; and I do assure your Lordships in the first place, That (excepting from the King's bounty) I have never received nor taken one penny but what was generally understood to be the just lawful perquisites of my office; by the constant practice of the best times, which I did of my own judgment conceive to be that of my Lord Coventry, and my Lord Elmore; the practice of which I constantly observed, although the office in both their times was lawfully worth double to what it was to me, and I believe now is.

That all the courtesies and favours which I have been able to obtain from the King for other persons in church or state, or in Westminster-hall, have never been worth me five pounds; so that your Lordships may be confident I am as innocent from corruption as from any disloyal thought, which after near thirty years service of the

crown, in some difficulties and distresses, I did never expect would be objected to me in my age.

And I do assure your Lordships, and shall make it very manifest, that the several sums of money, and some parcels of land, which his Majesty hath bountifully bestowed upon me since his return into England; are worth more than all that I have amounts unto; so far I am from advancing my estate by indirect means; and though this bounty of his hath very far exceeded my merit, or my expectation, yet some others hath been as fortunate at least in the same bounty who had as small pretences to it, and have no great reason to envy my condition.

Concerning the other imputation of the credit and power of being chiefest minister; and so causing all to be done that I had a mind to; I have no more to say, than that I had the good fortune to serve a master of a very great judgment and understanding; and be always join'd with persons of great ability and experience; without whose advice and concurrence, never any thing hath been done.

Before his Majesty's coming into England, he was constantly attended by the then Marquis of Ormond, the late Lord Culpeper, and Mr. Secretary Nicholas, who were equally trusted with myself; and without whose joint advice and concurrence, when they were all present (as some of them always were) I never gave any counsel. As soon as it pleased God to bring his Majesty into England, he established his Privy-council, and shortly, out of them he chose a number of honourable persons of great reputation, (who for the most part are still alive) as a committee for foreign affairs; and consideration of such things as in the nature of them required much secrecy, and with these persons he vouchsafed to join me. And I am confident this committee never transacted any thing of moment (his Majesty

jeſty being always preſent) without preſenting the ſame firſt to the council-board; and I muſt appeal to them concerning my carriage, and whether we were not all of one mind, in matters of importance.

For more than two years I never knew any differences in the councils, or that there were any complaints in the kingdom, which I wholly impute to his Maſteſty's great wiſdom, and the entire concurrence of his counſellors, without the vanity of aſſuming any thing to myſelf; and therefore I hope I ſhall not be ſingly charged with any thing that hath ſince fallen out amifs. But from the time Mr. Secretary Nicholas was removed from his place, there were great alterations; and whoſoever knew any thing of the court and councils, know well how much my credit hath ſince that time been diminished, though his Maſteſty graciously vouchſafed ſtill to hear my advice in the moſt of his affairs; nor hath there been from that time to this, above one or two perſons brought to the council, or preferred to any conſiderable office in the court, who have been of my intimate acquaintance, or ſuſpected to have any kindneſs for me; and moſt of them, moſt notoriously known to have been very long my enemies, and of different judgment and principles from me, both in church and ſtate, and have taken all opportunities to leſſen my credit with the King, and with all other perſons, by miſrepreſenting and miſreporting all that I ſaid or did, and perſuading men I have done them ſome prejudice with his Maſteſty, or croſſed them in ſome of their pretenſions. Though his Maſteſty's goodneſs and juſtneſs was ſuch, that it made little impreſſion upon him.

In my humble opinion, the great miſfortunes of the kingdom have proceeded from the war, to which it is notoriously known that I was always moſt averse, and may without vanity ſay, I did not only foreſee, but declare the miſchiefs we ſhould run in-

to, by entering into a war, before any alliances made with the neighbouring princes. And that it may not be imputed to his Maſteſty's want of care, or the negligence of his counſellors, that no ſuch alliances were entered into, I muſt take the boldneſs to ſay, his Maſteſty left nothing unattempted in order thereunto; and knowing very well, that France reſolved to begin a war upon Spain, as ſoon as his Catholic Maſteſty ſhould depart this world, which being much ſooner expected by them, they had in the two winters before been at great charges in providing in providing plentiful magazines of all provisions upon the frontiers, that they might be ready for the war, his Maſteſty uſed all poſſible means to prepare and diſpoſe the Spaniard with that apprehenſion, offering his friendſhip to that degree, as might be for the benefit and ſecurity of both crowns.

But Spain flattering itſelf, that France would not break with them; at leaſt, that they would not give them any cauſe by adminiſtring matter of jealouſy to them, never made any real approach towards a friendſhip with his Maſteſty, but, both by their ambaffadors here, and to his Maſteſty's ambaffador at Madrid, always perſiſted, as preliminaries, upon the giving up of Dunkirk, Tangier, and Jamaica.

Though France had an ambaffador here, to whom a project of a treaty was offered, and the Lord Holles, his Maſteſty's ambaffador at Paris, uſed all endeavours to purſue and proſecute the ſaid treaty, yet it was quickly diſcerned, that the principle deſign of France was to draw his Maſteſty into ſuch a nearer alliance as might advance their deſign; without which, they had no mind to enter into the treaty propoſed.

And this was the ſtate of affairs when the war was entered into with the Dutch, from which time, neither crown much conſidered the making any alliance with England.

As

As I did from my soul abhor the entering into this war, so I presumed never to give any advice or counsel for the way of managing it, but by opposing many propositions, which seemed to the late Lord Treasurer and myself to be unreasonable, as the payment of the seamen by tickets, and many other particulars which added to the expence.

My enemies took all occasions to envenom against me, and making their friendship with others out of the council, of more licentious principles, and who knew well enough how much I disliked and complained of the liberty they took to themselves of reviling all councils and counsellors, and turning all things scripus and sacred into ridicule. They took all ways imaginable to render me ungrateful to all sorts of men, (whom I shall be compelled to name in my defence) persuading those that miscarried in any of their designs, that it was the Chancellor's doing; whereof, I never knew any thing. However, they could not withdraw the King's favour from me, who was still pleased to use my service with others, nor was there ever any thing done but with the joint advice of at least the major part of those who were consulted with. And as his Majesty commanded my service in the late treaties, so I never gave the least advice in private, nor wrote one letter to any one person in either of those negotiations but upon the advice of the council, and also after it was read in council, or at least by the King himself, and some other; and if I prepared any instructions or memorials, it was by the King's command, and the request of the secretaries who desired my assistance; nor was it any wish of my own, that any ambassador should give me any account of the transactions, but to the secretaries, to whom I was always ready to advise; nor am I conscious to myself of ever having given advice that hath proved mischievous or inconvenient to his Maje-

sty; and I have been so far from being the sole manager of affairs, that I have not in the whole last year been above twice with his Majesty in any room alone, and very seldom in the two or three years preceding.

And since the Parliament at Oxford, it hath been very visible, that my credit hath been very little, and that very few things have been hearkened to, which have been proposed by me, but contradicted, *eo nomine*, because proposed by me.

I most humbly beseech your Lordships to remember the office and trust I had for seven years, in which, in discharge of my duty I was obliged to stop and obstruct many mens pretences, and refused to set the seal to many pardons and other grants, which would have been profitable to those who procured them, and many whereof, upon my representation to his Majesty, were for ever stopt, which naturally have raised many enemies to me: And my frequent concurring, upon the desires of the late Lord Treasurer, (with whom I had the honour to have a long and vast friendship to his death) in representing several excesses and exorbitances, the yearly issue so far exceeding the reveaues, provoked many persons concerned, of great power and credit, to do me all the ill offices they could. And yet I may faithfully say, That I never meddled with any part of the revenue or the administration of it, but when I was desired by the late Lord Treasurer to give him my assistance and advice, having had the honour formerly to serve the crown as Chancellor of the Exchequer, which was for the most part in his Majesty's presence. Nor have I ever been in the least degree concerned, in point of profit, in letting any part of his Majesty's revenue; nor have ever treated or debated it, but in his Majesty's presence, in which my opinion concurred alway with the major part of the counsellors who were present.

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All which, upon examination, will be made manifest to your Lordships, how much soever my integrity is blasted by the malice of those who I am confident do not believe themselves. Nor have I in my life, upon all the treaties, or otherwise, received the value of one shilling from all the Kings or Princes in the world, (excepting the books of the Louvre print sent me by the Chancellor of France, by that King's direction) but from my own master, to whose entire service, and the good and welfare of my country, no man's heart was ever more devoted.

This being my present condition; I do most humbly beseech your Lordships to entertain a favourable opinion of me, and to believe me to be innocent from those foul aspersions, until the contrary be proved, which I am sure can never be by any man worthy to be believed: And since the distempers of the times, and the difference between the two Houses in the present debate, with the power and malice of my enemies, who gave out that I should prevail with his Majesty to prorogue or dissolve this Parliament in displeasure, and threaten to expose me to the rage and fury of the people, may make me to be look'd upon as the cause which obstructs the King's service, and unity and peace of the kingdom.

I most humbly beseech your Lordships, that I may not forfeit your Lordships favour and protection, by withdrawing myself from so powerful a persecution, in hope that I may be able, by such withdrawing, hereafter to appear and make my defence, when his Majesty's justice (to which I shall always submit) may not be obstructed, or controuled, by the power and malice of those who have sworn my destruction.

CLARENDON.

Mr. *Vaugh.* I think it not convenient to lose more time about this paper, since the time of the Earl of Clarendon's name being
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mentioned here, I had nothing to charge him with till now, but most of the heads of this charge are so weighty, that I am confident, they will be easily and thoroughly proved, though I know not how; so that I admire at his confidence, to charge this House, and so the nation, as his persecutors, and that in such a condition, as he hopes to vindicate himself. It is the first time that ever I heard an innocent man run away under the greatest charge, with hopes to return again and vindicate himself.

Then mark one expression, he saith, "he is as far from corruption, as from disloyalty." If he said he was guilty of neither, he had said something; but by that expression he may be guilty of both: So insolent a paper I never met with in this kingdom, nor have I ever read the like in any other; so inconsiderable a part of the nation as he is, to lay it upon the nation, who, if innocent, might defend himself; if guilty, why doth he charge the nation with persecuting? Therefore, without troubling yourselves with it, do, as the Lords have done; who deliver it to you as a scandalous and seditious paper; it hath malice in it, and is the greatest reproach upon the King, and the whole nation that ever was given by man. Therefore put the question whether his paper shall not have the character, that it is a "Scandalous and Malicious Paper, and a Reproach to the Justice of the Nation."

Resolved upon the question.

That the paper sent to the Lords by the Earl of Clarendon, and by them sent down to the House of Commons, and now read, is "scandalous and seditious, and doth reproach the King and the public justice of the nation."

Sir *Rob. How.* You have voted this paper scandalous, and therefore it should not live, wherefore I move it should be burnt by the hangman.

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Mr.

Mr. Garraw. The paper is the Lords, and you must send it to them, but enter it into your books, and your vote upon it.

Resolved, "To have it burnt."

Sir Rob. Car. The paper is the Lords, therefore move them to concur that it may be burnt.

Sir Rob. How. The meaning of my motion is, because the Duke of B——k's desired the paper again for the admirableness of the stile, it is entered into their books already, and they need it not to that end; therefore desire the Lords concurrence to burn it.

Resolved, "To send it to the Lords to that end."

December 5.

A motion being made to send to the Lords in pursuance of the vote about burning the paper.

Mr. Vaugh. I am against sending up to the Lords to that purpose, because you have ordered to enter the paper into your books, and when a paper is burnt, it is not to stand upon record, but should be rased out; which two things are a perfect contradiction, therefore let it rest as it is; we have voted it scandalous, &c. The Lords tell us not that they have done any such thing, though they ought to have done it first.

As for the Earl of Clarendon, he being now gone, if such a like occasion should fall out, we are in a worse condition than we were; for there is this precedent against us, in a case now manifest; and it becomes us to do something in order to the Lords concurring, that is a good understanding may be got; therefore I shall propound this to you, to be sent up to them to that end.

Namely, when any subject shall be impeached by the Commons before the Lords in Parliament with desire to secure him, such person by the law of the land ought to

be secured accordingly. This you have in effect voted already, in saying the "justice of the kingdom is obstructed by their not doing it."

Secondly, When such impeached persons shall be secured, the Lords may limit a certain time for bringing in the charge, to prevent delay of justice.

This may salve all, and prevent such ways as may be displeasing to the Lords, and perhaps us also, in some cases hereafter.

Mr. Swin. I am persuaded that according to rules of Parliament, when you charge by impeachment generally, and promise in due time to send up your charge, they ought to secure, but they not having done it, I question whether you could do what you have; but the Earl of Clarendon flying, it is manifest justice was obstructed; for he might have been brought to his trial, if the Lords had secured him; but now your vote is made good, which seems to lay the advantage on your side.

Sir Rob. How. I think this message to the Lords, will destroy the way of vindicating ourselves by declaration; therefore finish the declaration, and then resolve before you publish it, whether to send up this message.

Mr. Vaugh. If the Lords agree with us, we may spare the declaration, but if they agree not now, they will much less hereafter; Your declaration can amount to no more but this, make a narrative of the invalidity of the Lords precedents; but then you must of necessity do something more, else your labour is in vain; therefore this message with these votes are necessary.

Sir Rich. Temp. I expected that when the Earl of Clarendon had been fled, the Lords would have desired the King to issue out a proclamation to apprehend him, seeing they have been the occasion of his escape; therefore now desire their concurrence to go to the King to that end, and if they

they concur, they have upon the matter granted commitment upon a general impeachment.

Mr. Vaugh. I thought it my duty to offer you what I have done, if you like it not, I desire to be excused in serving you in the Declaration, and that they who think it necessary would be pleased to take the pains to do it.

Sir Tho. Lee. If you declare, it will beget an answer, and where will that end? If you send up your votes, and the Lords agree, your end is answered; for it is a yielding that which they have yet denied; your declaring, and entering it upon the journal, will be to no purpose. It is but like a man; who having been beaten publicly, in the chamber calls him who did it rogue.

Mr. Hampd. I desire that the words (law of the land) may be left out, and the words (law of Parliament, or, usage of Parliament) put instead of them; for it hath been shewed us, that there are several ways of impeachment besides common law.

Mr. Vaugh. Those words were purposely put in, because at the free conference, when we pressed the "law of Parliaments," the Lords pressed the "law of the land" by way of negative, as if the "law of the land" were otherwise, but rather than that shall be any obstruction, put it "by law."

Mr. Stew. Leave out the words (by law) for if a man be secured, it is implied by them who do commit that it is according to law.

Then it being moved to draw both votes in one.

Sir Tho. Litt. Though you should put both votes into one, it will not answer your end, for the Lords will not concur with the first part, and yet may make use of what part you grant of it, that is the last, and so have advantage against you; but there is another reason, why you should forbear these votes, namely, "prudence."

The Earl of Clarendon being gone; there is an expectation that a bill should be prepared to do something farther, wherein I hope both houses will join; if you send up this, you will give disturbance to that bill, and if you should enter this in your books, in order to send it up hereafter, they will hear of it, as done to make them swallow their former "Resolves." Therefore defer it for the present.

Mr. Trev. Consider whether the matter betwixt you and the Lords is not well as it is: You have voted, That when a man is generally impeached, he ought to be secured, and that the Lords not having done it, is an obstruction to justice; and what will it signify to carry it to the Lords; what hath since fallen out, justifies you, and lays the disadvantage upon the Lords. The world expects now what you will do farther, and that must be by concurring with the Lords.

Sir Tho. Cliff. We all agree to these votes, in order to justify your rights; but what is the use of it? You have already done it in your books, and you cannot expect the Lords should go so much against their own votes, this therefore will but widen the gap, it being telling them they must eat their words.

Sir Tho. Litt. Those, who have had a hand in the charge against the Earl of Clarendon, have been thought sometimes too violent, sometimes too remiss, as not able to make out the charge: But what I speak now, is for your honour, which will be wronged in this proceeding; I am for bringing the impeachment to something; and therefore against these votes: Now you make a declaration of your own rights, and entering it upon your books, that not only the vote may appear, but the ground of it, but not to declare to the Lords, which will beget an answer and exasperate. It is now unreasonable to make the Lords retract, therefore lay it aside; for though I

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am confident that gentleman did it to no such end, yet if I would design any thing to the Earl of Clarendon's advantage, I could not take a better way than this.

Mr. Vaugh. This is but the affirming all which hath been done already, and I am for none of those, who are contriving for any thing out of the house.

Sir Will. Covent. This question is not now seasonable, tho' it is a better expedient than the declaration as things now stand, and considering what hath past, I am apt to think the Lords may do it of their own accord, and you would not willingly have a negative to your votes. Therefore seeing your votes may be of use hereafter, put no question at all, but adjourn the debate to a proper season.

Mr. Vaugh. I am against the adjourning of it, and have given testimony, that I have done nothing to be thought to do that which is so much for the advantage of the Earl of Clarendon, and shall take heed of doing any thing hereafter to be so reflected on.

Sir Tho. Litt. I hope I avoided any such reflection, nor speak any thing to such purpose, I do not believe, nor ever did think any such thing, and hope that gentleman himself believes, that no man in this house hath more honour for him than I.

Sir Job Charle. Let the world see that you do not intend to restrain your proceedings to the Earl of Clarendon, but make it a general care; and therefore are concerned in honour to put the question.

Resolved upon the question.

That the question be put.

Resolved, "That both the questions propounded by Mr. Vaugh, and put singly in the affirmative, be carried up to the Lords."

December 13.

A bill was brought from the Lords, to banish the Earl of Clarendon, and read.

After reading, several objections being made, and it being alledged, that it was an abuse put upon the Commons by the Lords, and that a bill of attainder being propounded, after some debate, the House passed this vote.

Resolved, "That this house taking notice of the flight of the Earl of Clarendon, being under an impeachment of high treason by this house; the King's Majesty be humbly desired to issue out his Proclamation for summoning the said Earl to appear by a day, and to apprehend him in order to his trial."

Resolved, "To send to the Lords for their concurrence to this vote."

December 14.

A message from the Lords for a conference, at which they delivered two reasons, why they could not concur.

1. First, for that they conceive a Proclamation in the way proposed, would be ineffectual, since it is not *sub pena convictionis*, which cannot be till particulars in order to trial be declared.

2. That what the House of Commons hath proposed, and do propose at present, is intended in order to a judicial way of proceeding; but since the Earl of Clarendon's flight, their Lordships upon consideration of the whole state of affairs, and of the kingdom, have upon grounds of prudence and justice, thought fit, for securing King and kingdom, to proceed in a legislative way against the said Earl, and have to that end, past and sent down to them a bill of banishment and incapacity against him, with which this vote is inconsistent.

December 16.

The said reasons from the Lords being reported and considered, and it being moved

ed that the house would declare themselves unsatisfied with them.

Sir Tho. Cliff. I am against passing a vote at present upon the Lords reasons, but read the bill sent down from thence, and summons him by it to appear by a day.

Mr. Trev. Some are against the bill, because it goes too far, condemning before hearing, others would have it go farther. Summons is in order to hearing, trial and judgment; of those he hath made himself incapable by flight, and hath in his paper told you, "That he will neither be heard, nor tried by you." Tho' you expected to have him secured by a general accusation, yet you never expected judgment upon it. Then it said, "This banishment falls short of treason," but we are not to pass sentence for crimes, but as a Council propound to the King what is necessary in this case: Then consider whether this bill will answer our ends, and if it doth, delay will make it worse. I think we should make it reach them, what if he hath life in other parts, his family untainted, and his children alive, and enjoy his estate.

Sir Rob. Carr. You have ordered to consider the reasons from the Lords, therefore do it.

Mr. Hen. Covent. The motion to read the bill is not against your order, because part of the reasons given by the Lords is, "That you have a bill, and till you have read the bill, you cannot lay by the reasons." The Earl of Clarendon is fled, you have a tye upon him in having his innocent relations, and by proceeding farther, you make him desperate, you are now in an even way with the Lords; therefore read the bill.

Mr. Swinf. You may go upon the reasons, and yet not reject the bill; for when you sent to the Lords about a proclamation, and went not upon the bill, it was, because what the bill drives at, is the highest punishment next to death. Therefore con-

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sider what weight is in the reasons. One of them seeming to put you upon the bill, they put you thereupon on a legislative way; they will neither secure nor summon him, but will condemn him unheard. They cannot secure him upon a charge of treason, nor yet summon him, but they can condemn him; and this they put you upon, which is against honour and justice, especially to do it upon reason of state. The legislative power of Parliaments is great, it hath no bound, but the integrity and justice of Parliaments. If reason of state be a motive of Parliament to banish one man, so it may be for many. If you go in this legislative way, you bring upon yourselves all the dishonour of the business, but the Lords will have some excuse, which you cannot, for they looked upon the charge so slight, as not to imprison him, the party is gone, because he was not secured, apprehending (he saith) fear of the multitude, not of his trial, so that the Lords not giving credit to your charge against him, he says, "he flies not from justice." Now, if upon this bill you shall banish him, it would be said you could not make good the charge; and therefore laid this sentence upon him.

The precedent is also dangerous: If having gone so far in a judicial way, you should now go in a legislative. If upon reason of state, Lords may be banished, it may be by dozens: As you proceed justly, so you will be justified.

Nor is the danger greater if the Lords go by proclamation, and he be put into custody when he comes, if he can practise any thing, will not be less capable when under the proclamation, than when this bill is passed, which condemns him without hearing, and I am not for any punishment till heard. In Cromwell's Case, who moved in Hen. VIIIth's time, to attain a Lord unheard, the Judges declared they might, and it would stand; afterward the said

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said Cromwell was attainted and condemned unheard, and such counsel usually falls upon those that counselled it.

Sir Rob. How. The Earl of Clarendon saith, "That he doth not withdraw from your justice, but fear of tumults; but that reason any man may give for his flying, if it will be an excuse; but he might have secured himself from tumults by rendering himself, and his innocency upon his trial would have cleared him. This at last may come to a free conference, then you may be left to go along with the King; the house riseth and doth nothing, and then the world will see that this business will assure the King of France, that he hath a man with him so great, as to hinder us from doing any thing against him: therefore as you ought to do something against him, see whether it may not be done by the bill by resuming his lands, &c. if he come not in by a day.

An exception may be against this way, namely, that there is no attainder, but if there had been such a bill, the thing which should sway me should be the Duke of York's marriage: so that if you commit this bill, you may add all severities, except that of attainder, and if he come by a day, then all to be void. If you go by proclamation, the Lords may not concur, and you lose your ends. By this bill all favour that he can expect is shewed, and this way will be the best confutation of the Lords reasons; therefore commit the bill.

Mr. Secretary Morr. I am for committing the bill, though it be condemning unheard; because he could not but conclude it would be so. *Et volenti non fit injuria.*

Sir Rich. Temp. You have proceeded against this Earl in all ordinary ways, and have been baffled by the Lords. In Edward the III^d's reign, Adam de Berry fled, and a proclamation went against him, and the Commons neither did, nor ever were bound to deliver their articles till the party

appeared, and in that case they delivered not their articles till the last day, when he not appearing was convicted. When you would go by attainder, they tell you, deliver special matter, and we will summon him; when you ask a proclamation, they tell you, deliver special matter: If you declare the matter to the Court, it is upon record, and all may know it. You have tried all ways legal and regular, and they will do you justice in neither. Now what can you do? Except you and the Lords combine in justice together, he must escape, and if you can be made to differ, he goes away in a smock. If you go to the King for a proclamation, you must return to the Lords for justice. I am sorry the Ivy hath been so near the Oak, that you cannot touch it, without touching that. There remains a bill before you, and in that you are upon equal terms with the Lords; therefore give him a day to be heard, and if he come, let him, but then his penalties are too low for his crimes; therefore read the bill, go higher, degrade him of honours, forfeit his lands, and whether you will go so far, I leave with you.

Mr. Soll. Gen. It is not possible to agree with the Lords in their reasons; but the reason must be because the bill is good. But if any man thinks it is good upon the Lords reasons, he is mistaken; and therefore my advice is to proceed upon the bill, though not upon the reasons from the Lords. Some think the punishment in the bill too little for the crime, others too much, because not summoned; so that it must fall out, that a person impeached by the House of Commons must see the house rise without any marks of displeasure upon him: Can any man be heard, who will not be heard? Why should not you proceed in such a way against him, as whose very flight amounts to a confession? And have you not burnt his paper for reflecting upon the

the house? And can you think he will appear who is departed in despair of the court? And now you are contending to give him time.

Then consider the thing in itself. Suppose the King had a mind to attain him, the King can do it without your help, for he may be outlawed for high treason; for tho' that be reverfable at common law, if he be beyond sea, yet by two exprefs acts of parliament it is otherwife, but the King cannot banish him without your concurrence: Suppose him fled and attainted, so that the question is not upon his life, but his estate, suppose your justice satisfied in that, is it not past all manner of consideration that the King cannot upon application restore it, so, that all you looked for by attainder, is done by this bill of banishment, for his life is saved by flight; as would his estate by compassion; but there is something in this bill, which, without it, you can never get, that is, you put him under your displeasure, which, the King cannot pardon; and will you have it thought abroad, that the Earl of Clarendon, fled as he is, hath been something too hard for the two Houses?

Sir Tho. Litt. If there be a necessity of differing with the Lords, and I thought the difference would produce such effects, I should not speak; but they only tell you 'tis unnecessary and ineffectual. You have impeached, and are now told if you proceed, it will make difference; but I fear another greater danger than this difference. The world will say you were willing he should fly, because you could not prove by flying he hath forfeited his estate, if the King give it him again it is his mercy; but do you justice: therefore press for a proclamation, for the bill is inconsistent with you honour.

Mr. Vaugh. I have listened with much attention to this discourse, and understand it as little now as at the beginning, the

discourse being nothing adequate to that end. You have reasons from the Lords, why they agree not with you, and if you agree with the reasons, the sum is to read the bill; but if you agree not, you must desire a conference, and if they concur, you may have a proclamation, if not (as I think they will not) you are where you were: We suppose him not to be in England, and if so, what is the proclamation more than the King's writ? it reacheth no man out of the kingdom. Its true, in some cases, if the persons are gone out of the land they are summoned, and if they come not, their lands are seized, but it is not by proclamation, which signifies nothing if the party be gone.

Then go on, suppose the Lords join in desiring a proclamation, the end of which is appearing and apprehending, possibly you gain one part, that if he be apprehended, they do imprison him upon a general impeachment; but if they agree not, what benefit have you by it? None: But if he appears, to what is it? there is no charge, if apprehended, to answer the general charge.

Then the third way is, if the Lords agree not, that you should go the King; and there is a more dangerous rock in that, than in any thing; for we never heard of a commitment *per ipsum Dominum Regem*, but *per mandatum Domini Regis*, because against the King lies no damages: What then must you do? many think it injustice to proceed, if he be not called by proclamation. But it is plain, if you proceed upon this bill, you go not upon your impeachment, but because he is fled from the justice of the land, wherewith you have charged him in burning his paper; and it imports little, that he saith he is innocent; for why then doth he fly? Shall we abate him of what he ought to suffer for his saying so? He is fled from the justice of the Parliament, and therefore is proceeded with,

with, and for what others say, you ought not to regard popular reasons; but to pursue your own; it is enough for you to hear some proofs made: When was it known in any court, that proofs should be taken only on one side? So that you cannot acquit your own justice, nor bring him any ways to answer, he being gone, nor can you have any effect of the proclamation, though the Lords join in it: Therefore, unless you will have nothing done after all this, (for he may not be guilty of all charged, who yet hath made himself guilty of what is charged by flying) read the bill.

At last the question was put, whether the bill should be read and committed.

109 for it.

55 against it.

164

December 18.

The bill for banishing the Earl of Clarendon was reported from the committee, and read.

Sir Rob. How. I desire that to the preface of the bill this addition may be made.

That whereas the Earl of Clarendon was impeached of treason by the Commons, who desired he might be secured, but was not, and thereupon is fled.

And this to the end the protesting Lords may be gratified, who took so much care of the Commons.

Sir Rob. Carr. Seconds the motion.

Sir John Talb. I cannot concur with that motion, because we cannot take notice of what the Lords do.

Sir Rich. Temp. We may take notice of things in the Lords books which are records, and there the protest is entered; and though not to gratify them who owned our right, yet we ought to take care of our own right: And that the world may see we

have some cause to pass this bill, neither deal so modestly with a man who flies from justice, as to use his own word (withdrawn) but call it flying.

Sir Tho. Gow. Let the words be, "that having been impeached, and moved to be secured, hath withdrawn himself."

Mr. Solicitor. The word "moved," destroys the bill itself, the word of the bill is to unite the two houses, and this amendment tends to destroy that end, for the addition to the preface being insisted on, the Lords will add the reasons for not committing, and so revive the whole matter again.

Let the Lords add in their books what they will, your books will as much justify you, as theirs them.

Sir Hum. Win. Let the words be added whether the Lords agree, or not, that it may appear upon our books.

Mr. Hugh Boscoru. The preface is but history, yet add the words, and let the Lords insert what they please, I should rather concur with them, than leave out those words.

Mr. Vaugh. Put no question upon these words, but whether the preface should go as it is: The bill in probability is a safe bill, because it came from them: But if you begin an alteration, you yourselves render it unsafe; for if you put in these words, then the Lords will add, "for want of special matter," and so it will come to nothing.

Then the bill was read the third time.

Mr. Vaugh. I am against the word "withdrawn," and for the word "flight" instead of it, and in regard the justice of this bill depends upon the word (flight) put it expressly.

Sir Rob. Carr. I am against this bill, though I was as earnest in the matter as any one while I thought there was proof, but now none appearing, I am against the bill, because

because you are confirming what the Lords have done.

Mr. Vaugh. Many men wonder that no reason is given for passing this bill, but the question is mistaken, the bill is grounded upon his flight after his impeachment, and his flying implies some guilt, if none, it is the safest argument for any man to run away, and then there is nothing to catch him. A proclamation to a man out of the kingdom signifies nothing. But in the whole it is plain, that he saith, that finding the King's justice obstructed in Parliament, he is fled.

Obj. But it will be said upon bare flight, never was any man punished.

Ans. If one man kills another and flies, though upon his tryal he shall be acquitted, yet he shall never recover his goods, because of his flight.

There has been several acts of banishment, Spencer, &c. And in this, is something more severe than in them, namely, that none shall correspond with him; then there is some advantage, namely, that if he come in by the 1st of February, all shall be void; but when the crime is laid, and his flight makes him guilty, he ought not to have a day.

Then the question was put for passing the bill.

65 for it.

42 against it.

107

And then the House adjourned.

Articles of HIGH-TREASON, and other Heinous Misdemeanors, exhibited against EDWARD, EARL of CLARENDON, Lord High-Chancellor of England, in the House of Lords; on the 10th of July, 1663. By the Earl of Bristol.

THAT being in place of highest trust and confidence with his Majesty, and having

ving arrogated a supreme direction in all his Majesty's affairs, both at home and abroad, hath wickedly, and maliciously, and with a traitorous intent to draw scandal and contempt upon his Majesty's person, and to alienate from him the affections of his subjects, abused the said trust in manner following, viz.

That he hath traiterously and maliciously endeavoured to alienate the hearts of his Majesty's subjects from him, by words of his own, and by artificial insinuations of his creatures and dependencies, that his Majesty was inclined to Popery, and had a design to alter the religion established in this kingdom.

That in pursuance of that traitorous intent, he hath to several persons of his Majesty's Privy-council, held discourses to this effect, viz.

That his Majesty was dangerously corrupted in his religion, and inclined to Popery.

That persons of that religion had such access, and such credit with him, that unless there were a careful eye had unto it, the Protestant Religion would be overthrown in this kingdom; and in pursuance of the said wicked and traitorous intent, upon his Majesty's admitting Sir Henry Bennet to be principal Secretary of State, in the place of Mr. Secretary Nicholas, he hath said these words, or words to this effect.

That his Majesty had given 10,000l. to remove a zealous Protestant, that he might bring into that place of high trust a concealed Papist, notwithstanding, that the said Sir Henry Bennet is known to have ever been both in his profession and practice constant to the Protestant Religion.

That in pursuance of the same traitorous design, several near friends and known dependencies of his, have said aloud, that were it not for my Lord Chancellor's standing in the gap, Popery would be in-

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were

roduced in this kingdom, or words to that effect.

That in pursuance of the aforesaid traiterous design, he hath not only advised and persuaded the King to do such things contrary to his own reasons and resolutions as might confirm and encrease the scandal, which he had endeavoured to raise upon his Majesty as aforesaid, of his favour to Popery, but more particularly to allow his name to be used to the Pope and several Cardinals in the solicitation of a Cardinal's cap for the Lord Aubigny, one of his own subjects, and great Almoner at present to his royal consort the Queen.

That in pursuance of the same wicked and traiterous design, he had recommended to be employed to the Pope, one of his own domestics, Mr. Richard Bealing, a person (though an avowed Papist) known to be trusted and employed by him in dispatches and negotiations concerning affairs of greatest concernment to the nation.

That in pursuance of the said traiterous design, he being chief minister of state, did himself write by the said Mr. Richard Bealing, letters to several Cardinals, pressing them in the King's name to induce the Pope to confer a Cardinal's cap on the said Lord Aubigny, promising, in case it should be attained, exemption to the Roman Catholics of England from the penal laws in force against them; by which address unto the Pope for that ecclesiastical dignity for one of his Majesty's subjects and domestics, he hath, as far as from one action can be inferred, traiterously acknowledged the Pope's ecclesiastical sovereignty, contrary to the known laws of this kingdom.

That in pursuance of the same traiterous design, he has called unto him several Priests and Jesuits, whom he knew to be superiors of orders here in England, and desired them to write to their generals at Rome, to give their help for the obtaining from the Pope the Cardinal's cap for the

Lord Aubigny as aforesaid, promising great favour to Papists here, in case it should be effected for him.

That he had promised to several Papists he would do his endeavour, and said he hoped, to compass the taking away all penal laws against them, which he did in pursuance of the traiterous design aforesaid; to the end they might presume and grow vain upon his patronage, and by their publishing their hopes of a tolleration, encrease the scandal endeavoured by him, and by his emissaries, to be raised upon his Majesty throughout the kingdom.

That in pursuance of the same traiterous design, being intrusted with the treaty betwixt his Majesty, and his royal consort the Queen, he concluded it upon articles scandalous and dangerous to the Protestant Religion.

That in pursuance of the same traiterous design, he concluded the same marriage, and brought the King and Queen together, without any settled agreement in what manner the rights of marriage should be performed, whereby the Queen refusing to be married by a Protestant priest, in case of her being with child, either the succession should be made uncertain for want of the due rights of matrimony, or else his Majesty to be exposed to a suspicion of having been married in his own dominions by a Romish Priest, whereby all the former scandals endeavoured to be raised upon his Majesty by the said Earl, as to point of Popery, might be confirmed and heightened.

That having thus traiterously endeavoured to alienate the affections of his Majesty's subjects from him upon the score of religion, he hath endeavoured to make use of all the malicious scandals and jealousies, which he and his emissaries had raised in his Majesty's subjects, to raise from them unto himself the popular applause of being the zealous upholder of the Protestant religion, and

and a promoter of new severities against Papists.

That he had traiterously endeavoured to alienate the affections of his Majesty's subjects from him, by venting in his own discourse, and by the speeches of his nearest relations and emissaries, opprobrious scandals against his Majesty's person and course of life, such as are not fit to be mentioned, unless necessity in the way of proof shall require it.

That he hath traiterously endeavoured to alienate the affections of his Highness the Duke of York from his Majesty, by suggesting unto him jealousies as far as in him lay, and publishing abroad by his emissaries, that his Majesty intended to legitimate the D. of Monmouth.

That he hath wickedly and maliciously, contrary to the duty of a Privy-counsellor of England, and contrary to the perpetual and most important interest of this nation, persuaded his Majesty, against the advice of the Lord General, to withdraw the English garrisons out of Scotland, and to demolish all the forts built there, at so vast a charge to this kingdom.

That his Majesty having been graciously pleased to communicate the desires of the Parliament of Scotland for the remove of the said garrisons to the Parliament of England, and to ask their advice therein, the said Earl of Clarendon, not only persuaded his Majesty actually to remove those garrisons, without expecting the advice of his Parliament of England concerning it, but did by menaces of his Majesty's displeasure, deter several Members of Parliament from moving the House, as they intended, to enter upon consideration of that matter.

That he had traiterously and maliciously endeavoured to alienate his Majesty's affections and esteem from this his Parliament, by telling his Majesty that there was never so weak and inconsiderable a

House of Lords, nor never so weak and so heady a House of Commons, or words to that effect, and particularly, that it was better to sell Dunkirk, than to be at their mercy for want of money, or words to that effect.

That he hath wickedly and maliciously, contrary to his duty of counsellor, and to a known law made last sessions, by which money was given, and particularly applied for the maintaining of Dunkirk, advised and effected the sale of the same to the French King:

That he hath contrary to law, enriched himself and his treasures by the sale of offices.

That contrary to his duty he hath wickedly and corruptly converted to his own use, great and vast sums of public money raised in Ireland by way of subsidy, private and public benevolences, and otherwise, given and intended to defray the charge of government in that kingdom. By which means a supernumerary and disaffected army hath been kept up there, for want of money to pay them off, occasioned it seems to be because of the late and present distempers of that kingdom.

That having arrogated to himself a supreme direction of all his Majesty's affairs, he hath, with a malicious and corrupt intention, prevailed to have his Majesty's customs farmed at a far lower rate than others do offer, and that by persons, with some of whom he goes a share in, that, and other parts of money resulting from his Majesty's revenue.

July 10, 1663.

BRISTOL.

The Earl of Bristol having exhibited against the Lord Chancellor, Articles of High-Treason, and other Misdemeanors. This Order was made by the House of Peers.

Dis

Die Veneris, July 10, 1663.

Ordered by the Lords Spiritual and Temporal in Parliament assembled, That a copy of the articles or charge of High-Treason, exhibited this day by the Earl of Bristol, against the Lord Chancellor, be delivered to the Lord Chief Justice; who, with all the rest of the Judges are to consider whether the said charge hath been brought in regularly and legally, and whether it may be proceeded in, and how, and whether there be any treason in it or no, and make report thereof to this House on Monday next if they can, or else as soon after as possibly they may.

Whereupon all the Judges met at Sergeants Inn in Fleet-street, and my Lord of Bristol repaired to us thither, desiring to see the order; which being read, he told us he came out of respect to know of us whether we were informed how it came into the House of Peers, whether as a charge or not; but one of the Judges, who had been present when it was delivered in, saying, "we were tied up by our order," his Lordship took some exception at the manner of his expression, as if his Lordship's address was unnecessary at that time, and taking it as a rebuke unto him, went away; but according to our order, which supposed it to be a charge of High-Treason, and not mentioning Misdemeanor, we did upon consideration unanimously agree upon this ensuing answer, which on Monday the 13th of July, the Lord Chief Justice Foster did deliver in; viz.

We conceive that a charge of High-Treason cannot by the laws and statutes of this realm be originally exhibited by one Peer against another unto the House of Peers, and that therefore a charge of High-Treason by the Earl of Bristol against the Lord Chancellor, mentioned in the order

of reference to us of the 10th of this instant July, hath not been regularly and legally brought in, and if the matters alledged in the said charge, were admitted to be true, although alledged to be traiterously done, yet there is no treason in it.

Which answer being given in, the Earl of Bristol took some exceptions at it, and some of the Lords inferred thence, that if it were irregularly and illegally brought in, it was a libel; but we satisfied them that it was not under consideration of us, whether it came in as an information or charge; our order required us to give answer to it as a charge.

Secondly, We did not meddle with any thing concerning accusing him of Misdemeanor, for our order reached only to Treason:

Thirdly, It did not follow that if this charge were irregular, or illegal, that therefore he was criminal: There might be precedents to give colour to such kind of proceedings, for which, till it be declared or known that they are illegal, they are titular, and ought not to be punished.

But it was much insisted on, That we should deliver the reason of our opinions, the Lord of Bristol and his friends seeming unsatisfied.

We Replied, That it was never known, that when the Justices to whom questions were referred from Parliament, had unanimously agreed in their opinions, that reasons were required from them. Yet notwithstanding, it being the desire of the Lords, after some things premised, and a desire that this should not be drawn into an example, (which the Lords assented unto as I took it, for no order was entered concerning it, there being no order as I think for delivering our reasons entered) and it was agreed amongst us, that no note should be reduced, lest we might be required to deliver our reasons in writing; nor had I time to digest it in writing, having only Monday

Monday night after conference with my brethren to think upon it, I did on the next Tuesday, being the 14th of July, deliver the reasons of all the Judges, of their opinions, by their Consents. To the first point, "That a charge of High-Treason cannot originally be exhibited by one Peer against another unto the House of Peers," the emphasis of the word Originally was shewed.

For First, an indictment of Treason against a Peer may be removed up to the Lords House to be tried, as it was in the 31st of Hen. VI. in the Earl of Devonshire's case, but a Steward was then to be made.

Secondly, If an impeachment came from the House of Commons unto the Lords House, we did not take upon us the consideration, whether this could be proceeded in or not, for it was not the case to which we were required to give answer.

We Replied, Upon the statute of 1st of Hen. IV. cap. 14. which recites the many great inconveniencies and mischiefs by appeals, and provides that all appeals of things within the realm, shall be tried and determined by the good laws of the realm made and used in the time of the King's noble progenitors, and appeals of things out of the realm before the Constable and Marshal: But we relied upon the clause ensuing, and thereupon it is accorded and assented, That no appeals be from thenceforth made, or in any wise pursued in Parliament in time to come. I shewed appeals in this statute, and accusations by single persons were one and the same thing, and that this statute reached to all appeals, charges, accusations or impeachments delivered in, in Parliament, whereupon the person accused was to be put to his answer, and that they were but several names of the same thing, I shewed first historically, that the appeals of the 11th of Rich. II. and 21st of Rich. II. were but accusations by

those Lords of felons against the other, and differed from the case of the Dukes of Hereford and Norfolk, which was to be tried as 21st of Rich. II. Pl. Cor. in Parl. No. 19. is by the course of the civil law, and thereupon battle was waged. That though it concerned Henry IV. in interest to confirm the 11th of Rich. II. and repeal the 21st of Rich. II. he being appellant in the former, yet he saw the mischief so great, that he himself made provision against them for the time to come; and indeed, the mischief was so great, that it ceased not after the destruction of many Lords and families (there being *lex talionis* in that 21st of Rich. II. used towards most of those appellants in the 11th of Rich. II.) till it tumbled King Rich. II. first out of his throne, and then into his grave.

That there were but two sorts of proceedings in *capitalibus*, the suit of the party which was called an appeal, or the suit of the King, who ought to proceed by indictment, and so to trial by virtue of *Magna Charta. Nec super eam ibimus*, &c. and that, in an appeal, being the suit of the party, there was no prerogative of appearance if it were an appeal at the common law, 10th of Ew. IV. Lord Gray's case. That an appeal was taken in our law-books frequently for an accusation by the party, I cited Westm. the 1st. cap. 14. where the words appeal reaches to indictment. And 9 Cook, 119. Lord Zanchar's case, than an appeal of two significations, one general and frequent in our books for an accusation, and Stamford, 142. In case of an approver, the felon after confession may appeal, that is (saith he) accuse others, coadjutors with him to do the felony. C. C. 189. Appellant, cometh from the French word *appeller*, which signifies to accuse, or appeach, and C. C. 287. Appel signifieth an accusation; and therefore to appeal a man is as much as to accuse, and in ancient books he that doth appeal a man is

called accufator, *vide* 9th of Edw. II. *Articuli Cleri*, cap. 16. That I know no reason why in those tumbling times of Rich. II. (which caused this statute, for the statute-roll is *comant ad autermant' este us en temps la darren roy*, Rich. II.) They should proceed by way of appeal, but because they were then allowed at the suit of the party to accuse any other of Treason, but at the King's suit there ought to be an indictment, and an indictment could not be found but by jury.

That in all other cases, an appeal was to be brought by the party concerned, the wife or heir, or party robbed, &c. But in case of Treason, any man may appeal another, and therefore in all reason it must be understood of an accusation; and any man might accuse another of Treason; and if it can be proved by witnesses, it must not be tried by battle, as other appeals may. I concluded that the eighth of Hen. VI. No. 38. this statute, the 1st of Hen. IV. cap. 14. is recited, and desired it should be duly kept, and put in execution, which was granted, that Stamford 78. See Pl. Cor. 31. 132. agree that appeals of High-Treasons were not commonly used to be sued in Parliament, till the 1st of Hen. IV. cap. 14. Since which time his manner of appeal hath gone out of use; and I said, I had searched many precedents, and though of late, there may be a precedent (as it was of the Earl of Bristol's father against the Duke of Buckingham, of some kind of impeachment) yet I did confidently believe there was not since that statute, 1st of Hen. IV. cap. 14. any one precedent of such an impeachment at the party-suit whereupon there was any indictment: In truth in the Earl of Bristol's case, the Commons House did impeach the Duke of Treason, and so the Earl of Bristol's impeachment proceeded not.

For the Second Point, "That there was no Treason in the charge, though the matters in it are alledged to be traiterously

done." I said we had perused each article *seriatim*, and we had found no Treason in them, the great charge, which is endeavoured to be proved by many particulars, was, "That he did traiterously, and maliciously, to bring the King into contempt, and with an intent to alien the peoples affections from him, say, &c. such and such words, &c."

And so it runs on, That in pursuance of the traiterous intent, &c. he did, &c. and that in farther pursuance of the said traiterous design, &c. And in like manner was most of the articles upon which the characters of Treason seemed to be fixed. I said that it is a transcendent misprision or offence to endeavour to bring the King into contempt, or to endeavour to alienate the peoples affections from him, but yet it was not Treason. This statute, 13th Car. II. cap. 1. makes Treason during the King's life: But if a man calls the King Heretic, or Papist, or that he endeavours to introduce popery, (which is more in express terms than the article of that kind insinuates) or by words, preaching, prayer, to stir up the people to hatred or dislike of the person of his Majesty, or the established government; the penalty is only disability to enjoy any place ecclesiastical, civil, or military, and subject to such penalties as by the common-law or statute of this realm may be inflicted in such case, (which is fine and ransom, with imprisonment) and it limits a time and manner of prosecution.

There was an objection made yesterday upon the 25th of Edw. III. That this being in Parliament, the King and Parliament had power to declare Treason, and then we ought to have delivered our opinions with a qualification, unless it be declared Treason by Parliament where this charge is depending: To this I answered.

First, 'Tis not Treason in *presenti*, and if such a declaration should be *non constat*, whether

whether it would relate to the time past.

Secondly, That I conceived that the statute as touching that declaratory power, extended but to such cases as were clearly felony, as single acts, if not Treason, (the words being) "Whether it be Treason or other felony; but in respect of the doubts of escheats, which, if Treason, belonged to the King; if felony, to the Lords of the fee, it was left to the Parliament. I did not say we resolved the point.

Tbirdly, That admitting the Declaratory Power did extend to other cases than such as were before the Judges, and was not taken away by 1 M. cap. or any other statute, yet I read my Lord Cook's opinion at large, Pl. Cor. fol. 22. That this declaration must be by the King, Lords and Commons, and by any two of them alone; and we were now in a judicial way before the House of Peers only; and I did affirm as clear law, that by this judicial way no Treason could be declared nor adjudged, but as were expressly within the letter of the 25th of Edw. III. and said, That statute of 25th of Edw. III. was a second *Magna Charta*, and that their ancestors thought it their greatest security to narrow, and not to enlarge Treason, and cited 1st of Hen. IV. cap. 10. to which in the Parliament-roll is added Rot. No. 17. (it coming of the King's free grace) That the Lords did much rejoice and humbly thank the King: And I read the statute 1 M. cap. 1.

That the now Earl of Bristol in my Lord of Strafford's case, was the great affector of the law against constructive and accumulative Treason, which if admitted, their Lordships could better suggest unto themselves, than I express, how great a door they would let open to other inconveniencies and mischiefs to the Peerage. I concluded with reading the act, 14th of Car. II. for Reversing the Attainder of the Earl of Strafford;

the first part whereof I read to them, wherein is expressed, That they who condemned him, did purposely make an act of Parliament to condemn him upon an accumulative Treason, none of the pretended crimes being Treason apart, and so could not be in the whole, if they had been proved.

After I had spoken to this effect, the Earl of Bristol seemed to acquiesce, inasmuch as concerned our opinions as the case was delivered to us, but it being to be put to the question, whether the Lords did concur with the Judges opinions, and himself being concerned in the illative, that therefore the charge was illegal and irregular; yet not being intended by him, as he said, as a charge, but an information, he desired (though as the case was put to us, it was a good inference) that the voting of that might be spared till it was resolved by the Lords whether he delivered it in as a charge, or only as an information for the matter of the charge if it should be thought fit for their Lordships to proceed in it: After some debate upon the question, the Lords Resolved the same day according to our opinions.

First, That a charge of High-Treason cannot by the laws and statutes of this realm be originally exhibited by one Peer against another, unto the House of Peers.

Secondly, That in these articles, if the matter alledged in them were admitted to be true, there is no Treason in them, and because the Lords unanimously concurred in them, (my Lord of Bristol freely as any other) it was by order entered, that these votes were *nemine contradicente*.

Note, That in Judge Hatton's reports, fol. the resolution of the Judges is expressed to be, That a Peer cannot be impeached but by indictment, and Mr. Rushworth in his collections, fol. 272. expresses such an opinion to be delivered by the Judges.

Judges in 1 or 2 Car. but upon search it was found to be entered in the Journal of Parliament of that time, but it was cautious referring to the common-law only. But that for proceedings in Parliament it did not belong to them to determine, or to that effect; but no mention of 1st of Hen. IV. cap. 14. It hath been credibly reported that some of the Judges in my Lord of Strafford's case, being asked some questions, did with the like caution deliver their opinions, and did speak with reservations, (as the case is put) though they upon hearing, did know the case mis-put; which, after, troubled the conscience of one of them (*ut audivi*) being a grave learned man. *Vide* Peacock's case, Cook fol. But we having the case referred to us in Parliament upon articles exhibited in Parliament, did resolve to deliver our opinions without any such reservation; and

the act of the 1st of Hen. IV. being expressed against appeals in Parliament, (and of Acts of Parliaments after they are once made, none under the King, and without him are interpreters but the Judges. (See King's answer printed in the old print of 3d of Car. 1. at the end of the petition.) And therefore did deliver these opinions which I conceive of great benefit to the Lords themselves, and a just ground for farther enquiry to be made, whether such impeachments may be in the House of Peers for other Misdemeanors, without the King's leave, or being exhibited by his Attorney.

And secondly to take into consideration the validity of impeachments of Treason by the House of Commons, notwithstanding the late precedents which yet ended in a bill, and so in the legislative, not judiciary way.

The CASE of ANTHONY Earl of SHAFTSBURY; as it was argued before his Majesty's Justices of the King's-Bench, the 27th and 29th of June, in Trin. Term. 29 Car. II. 1677.

THIS day the Earl of Shaftsbury was brought to the bar upon the return of an *Alias Hab. Corp.* directed to the Constable of the Tower of London; the effect of the return was, that Anthony of Shaftsbury, in the writ mentioned, was committed to the Tower of London, 16 Feb. *Anno Dom.* 1676. By virtue of an order from the Lords Spiritual and Temporal then in Parliament assembled: the tenor of which order followeth *in hac verba*.

"Ordered, By the Lords Spiritual and Temporal in Parliament assembled, that

the Constable of his Majesty's Tower of London, his deputy or deputies, shall receive the bodies of James Earl of Salisbury, Anthony Earl of Shaftsbury, and Philip Lord Wharton, Members of this house, and keep them in safe custody, within the said Tower, during his Majesty's pleasure, and the pleasure of this house; for high contempts committed against this house: And this shall be a sufficient warrant on that behalf.

To the Constable of the Tower, &c.

J. Browne Cler. Par."

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The Earl of Shaftsbury's council prayed that the return might be filed, and it was so, and Friday following appointed for debating the sufficiency of the return, and in the mean time directions were given to his Council to attend the Judges and Attorney General, with their exceptions to the return, and my Lord was remanded till that day; and it was said, that tho' the return was filed, the court could remand or commit him to the Marshalsea at their election.

On Friday the Earl was brought into court again, and his council argued the insufficiency of the return.

Williams said, That the cause was of great consequence, in regard that the King was touched in his prerogative; the subject was touched in his liberty, and this Court in its jurisdiction.

1st, The cause of commitment which is returned, is not sufficient, for the general allegations of high contempts is too uncertain, for the Court cannot judge of the contempt, if it doth not appear in what act it consists.

2dly, It is not known where the contempts were committed, and in favour of liberty, it shall be intended they were committed out of the House of Peers.

3dly, The time is uncertain, so that, peradventure, it was before the last act of general pardon.

4thly, It does not appear whether the commitment were on a conviction or accusation only.

It cannot be denied, but that the return of such a commitment, by any other court, would be too general and uncertain, *More*, 893, Aftwich was bailed on a return, *quod commissus fuit per mandatum. N. Milit. Dni. Custod. Magn. Sigit. Angliæ virtute cujusdem contemptus in curia facti*, and in that book, that divers other persons were bailed on such general returns, and the cases have been lately affirmed in

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Busshel's Case, reported by the late Lord Chief Justice Vaughan, where it is expressly said, that such commitment and return being too general and uncertain, the Court can't believe in an implicit manner, that in truth the commitment, was for causes particular and sufficient.

Vaughan's Reports, 140. *Accord. 2 Inst.* 52, 53, et 55. and the 1 Rolls 218. and though the commitment of the jurors was for acquitting Pen and Mead, *contra plenam & manifestam evidentiam*: It was resolved to be too general, for the evidence ought to appear as certainly to the judge of the return, as it appears before the judge authorized to commit. *Rush. Case.* 137.

Now this commitment being by the House of Peers will make no difference; for in all cases where a matter comes in judgment before this court, let the question be of what nature it will, the court is obliged to declare the law, and that without distinction, whether the question began in Parliament or no. In the case of George Binion in C. B. there was a long debate, "Whether an original writ might be filed against a Member of Parliament, during the time of privilege;" and it was urged, "that it being during the session of Parliament, the termination of the question did belong to the Parliament:" But it was resolved that an original might be filed; and Bridgman then Chief Justice, said, that the Court was obliged to declare the law in all cases that came in judgment before them. H. 4. Ed. 4. Rut. 4. 7. 10. in *Scacc.* In debt by River *versus* Cousin, the defendant pleads he was sent of a Member of Parliament, *et ideo capi seu arrestant non debet*, and the plaintiff prays judgment and afterwards by advice of all the Judges the judgment was entered. *Videtur Baronibus quod tale habetur privilegium quod magnates, etc. Et eorum familiares capi seu arrestare non debent sed nulum habetur privilegium quod non debent implantare ideo respondet noster.* So in *Tri-*
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vinyard's case, a question of privileges was determined in this Court. Dyer 60. in 14 Edw. III. in the case of Sir John and Sir Jeoffrey Stanton, which was cited in the case of the Earl of Clarendon, and is entered in the Lords Journal.

An accord of Waist, depended between them in the Common-Pleas, and the Court was divided and the Record was certified into the House of Lords, and they gave direction that the judgment should be entered for the plaintiff; afterwards on a writ of error brought in this Court that judgment was reversed, notwithstanding the objection, that it was given by order of the House of Lords; for the Court was obliged to proceed according to the law in a matter that was before them in point of judgment. Not long since the Earl of Bristol exhibited an accusation against the Earl of Clarendon to the House of Lords, and it contained divers matters, whereof some did arise out of Parliament, and it was referred to the Judges to consider whether that procedure was parliamentary; and the 4th of July 1663, it was resolved by the Judges, that the Lords ought not to proceed only upon an impeachment by the Commons, when the matters arise out of the House.

The construction of all acts of parliament are given to the courts of Westminster, and accordingly they have Judges of validity of Acts of Parliament, they have searched the Rolls of Parliament, Hub. 109. Lord Hunfdon's case, they have determined whether the Journal be a Record, Hub. 110. When a point comes before them in Judgment, they are not foreclosed by any act of the Lords, but ought to judge according to the law, by which the Realm is governed, and not by the Lords: If it appears that an Act of Parliament be made by the King and Lords without the Commons, that act is *Fe-lo-de-se*, and the courts of Westminster ought to judge it void, 4.H. 7. 18. Hub. 111. and accord-

ingly they ought to do, if this return contain in it that which is fatal to itself. It hath been a question often resolved in this Court when a writ of error in Parliament shall be a *Superfedeas*, and this Court hath determined that shall be said to be a Session of Parliament, 1 Rolls 29. and if the law were otherwise there would be a failure of justice. If the Parliament were dissolved, there would be no question but the prisoner should be discharged on a *Habeas Corpus*, and yet then the Court must examine the cause of commitment, and by consequence a matter parliamentary, and the Court may now have cognizance of the matter as clearly as when the Parliament is dissolved. The party would be without remedy for his liberty, if he could not find it here, for it is not sufficient for him to procure the Lords to determine their pleasure for his imprisonment, for before his enlargement he must have the pleasures of the King to be determined, and that ought to be in this Court, and therefore the prisoner ought first to resort hither.

Let us suppose (for it does not appear in the return, and the Court ought not to enquire of any matter out of it,) that the supposed contempt was a thing done out of the House; it would be hard for this Court to remand him: Suppose he were removed to a foreign prison, during the pleasure of the Lords: No doubt, but that would have been an illegal commitment against Magna Charta and the petition; there the commitment would have been expressly illegal, and it may be this commitment may be no less; for if it had been expressly shewn, and if he be remanded, he is committed by this Court, who are to answer for his imprisonment.

But 2. The limitation of the imprisonment during the pleasures of the King and the House is illegal and uncertain; for since it ought to determine in two courts, it can have no certain period, a commitment.

ment until he shall be discharged by King's Bench and Common Pleas is illegal; for the prisoner can't apply himself in such a manner as to obtain his discharge. If a man be committed to further order, Cook saith, he is baylable presently, for that imports till he shall be delivered in good course of law, and if this commitment have not that sense, it is illegal, for the pleasure of the King is that which shall be determined according to law in his courts, as where the Stat. of Westminster, 1 Chap. 15. declares that he is not reprobable, who is taken by command of the King, who ought not to extend to an extrajudicial command but in his courts of justice, to which all matters of judicature are delegated and distributed. 2 Inst. 186. and 187.

Wollop, To the same purpose, cited Bushell's case, Vaughan, 137. that the return for high contempts was not sufficient, and the court that made the commitment in this case makes no difference in the case, for otherwise one may be imprisoned by the House of Peers unjustly, for a matter relievable here, and yet shall be without any manner of relief, by such a return; for on supposition that this court ought not to meddle where the person is committed by the Peers, any person at any time and for any cause may be subject to a perpetual imprisonment at the pleasure of the Lords.

And the law is otherwise, for the House of Lords is the supreme court, yet their jurisdiction is limited by the common and statute law, and their excises are examinable in this court, for there is a great difference between the errors and excise in and of a court, between an erroneous proceeding without jurisdiction which is void and a mere nullity, 4 H. 7. 18. 6. in the Parliament the King would have one attain it of treason, and lose his lands, and the Lords assented, but nothing was said of the Com-

mons, wherefore all the Justices held clearly that it was no act, and he was restored to his land, and without doubt in the same case if the party had been imprisoned, the Justices might have made the like resolution that he ought to have been discharged.

It is a solæcisme that a man shall be imprisoned by a limited jurisdiction, and it shall not be examinable, whether the cause were within their jurisdiction or not, if the Lords without the Commons should grant a tax, and one that refused to pay it should be imprisoned, the tax is void; but by a general commitment the party shall be remediless if so be the Lords should award a *capias* for treason or felony.

By these instances it appears that their jurisdiction was restrained by the common law, and it is also restrained by divers Acts of Parliament, 1 Hen. 4. Chap. 14. no appeals shall be made, or any ways pursued, or where a statute is made a power is implicitly given to this court by the fundamental institution, which makes the Judges expositors of Acts of Parliament; and peradventure if all this case appeared upon the return, this might be a case in which they were restrained by the stat. 4. Hen. 8. Chap. 8. That all the suits, pleadings, and condemnations, &c. many time from henceforth, at any time to be put or had upon any members for any bill speaking or reasoning of any matters concerning the Parliament to be communed or treated of, shall be utterly void and of no effect, now it does not appear, but this is a correction and punishment imposed upon the Earl, contrary to the statute, there is no question now made of the power of the Lords but it is only urged that it is necessary for them to declare by virtue what power they proceed, otherwise the liberty of every English man shall be subject to the Lords, whereof they may deprive any of them against an Act of Parliament.

liament, but no usage can justify such a proceeding. Elsmore's Case of the post, Nati. 19. The Duke of Suffolk was impeached by the Commons of high treason, and misdemeanors, the Lords were in doubt whether they should proceed upon such a general impeachment to imprison the Duke, and the advice of the Judges being demanded, and their resolution given in the negative, the Lords were satisfied. This case is mentioned with design to shew the respect given to the Judges, and that the Judges have determined the highest matters in Parliament. At a conference held between the Lords and, the Commons, 3d. April 4. Car. concerning the right and privilege of the subject, it was declared and agreed, that no freeman ought to be committed or restrained by commitment of the King or Privy-council, or any other (in which the House of Peers is included) unless some cause of commitment, restraint, or detainor be set forth, for which by law he ought to be committed, &c.

Now if the King, who is the head of the Parliament, nor the Privy-Council who is a court of state, to which secrecy is so necessary, may not imprison without shewing cause, *a fortiori*, the Lords in Parliament can't, which are a court of law as well as a court of state, and therefore ought not to proceed in an illegal manner, 'tis true in 1. Rolls. 192. Rushworth's case, Cook is of opinion that the Privy Council may commit without shewing cause, but in his more mature age, he was of another opinion, and accordingly the law is declared in the petition of right.

Smith argued to the same purpose, and said a Judge cannot make a Judgment unless the fact appears to him, and on an Habeas Corpus, the Judge can only take notice of the fact returned; it is lawful for any subjects that finds himself agrieved by any sentence or Judgment to petition the

King in an humble manner for redress, and where the subject is restrained of his liberty, the proper place for him to apply himself unto is this court, which hath the supream power as to this purpose, over all courts, and on an Habeas Corpus issuing hence, the King ought to have an account of his subject, Rolls. Hab. Corp. 64. Witherlies case, and though the commitment be by the Lords, yet if it be illegal, this court is obliged to discharge the prisoner, as well as if he had been illegally imprisoned by any other court; the House of Peers is a high court, but the King's Bench hath ever been intrusted with the liberty of the subject, and if it were otherwise in case of imprisonment by the Peers, the power of the King was less absolute than the power of the Lords.

It does not appear but that this commitment was for breach of the privilege, but nevertheless if it were, this court might give relief, as appears in Sir George Bigmore's Case, before cited, and Mich. 12. Ed. 4. Rut. 20. for the court which has power to judge what is privilege, has also power to judge what is contempt of privilege; if the Judges may judge of an Act of Parliament, *a fortiori*, they may judge of an order of the Lords, 20. Ed. Butcher's Case, where he in reversion brought an action of waste, and died before judgment, and his heirs brought an action for the same waste, and the King and the Lords determined that it did lie, and commanded the Judges to give judgment accordingly for the time to come; but by Ryley 39, it appears that it is only an order of the King and the Lords, and that was the cause the Judges conceived that they were not bound by it, but 39. 3. 13. and ever since have judged the contrary if it be admitted. For that for breach of privilege may commit, yet it ought to appear on the commitment that that was the cause, for otherwise that may be called a breach, which

which is only a refusal to answer to a matter whereof the House of Lords is restrained to hold plea by the stat. of 1. Hen. 4. and for a contempt committed out of the house they cannot commit for the word appeal in the statute extends to all misdemeanors, as it was resolved by the Judges in the Earl of Clarendon's Case, July. 1663. If the imprisonment be not lawful, the Court cannot remand him to his wrongful imprisonment, for that would be an act of injustice, to imprison him, *De novo, Vaughan* 156. It does not appear whether the contempt was a voluntary act, or an opinion, or an inadvertency, and he has now suffered five months imprisonment already; false imprisonment, is not only where the commitment is unjust, but where the petition is too long. 2 Inst. 53. In this case if this court cannot give remedy, peradventure the imprisonment shall be perpetual; for the King, as the law is now taken, may adjourn the Parliament for 10 or 20 years.

But all this is said on supposition that this session has continuance, I conceive that the King's giving his royal assent to several laws which has been enacted, the session is determined, and then their order for the imprisonment is also determined, Brook Parliament. 86. Every session in which the King signs bills is a day of itself, a session of itself, 1 Car. I. 7. A special act is made, the giving the royal assent to several bills, shall not determine the session. ('Tis true, 'tis there said to be made for the avoiding all doubts.) In the stat. 16 Car. I. There is a promise to the same purpose, and also 12 Car. II. 1. and 22 and 23 Car. II. 2. 1, 11. Ro. 2. No. 12.

By the opinion of Cook, 4 Inst. 27. the royal assent does not determine, but the authorities on which he relies, don't warrant his opinion, for first in the Parliament, Roll. 1 H. VII. It appears that the royal assent was given to the Act, for the reversal of the attainder of the Mem-

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bers of Parliament; the same day it was given to the other bills, and the same year the same Parliament assembled again, and then 'tis probable, that the members which had been attainted were pretens and not before, 8 R. II. No. 13. is only a judgment in case of treason, by virtue of a power reserved to them on the statutes 25 Ed. III. Rot. Parliament, 7 H. IV. No. 29. is not an act of Parliament, 24 Ed. III. No. 789. The act is first entered on the roll, but on condition the King will grant their other petitions, the inference my Lord Cook makes, that the Act for the attainder of Queen Katherine, 33 H. VIII. was passed before the determination of the session, yet it was on a judgment given against by the commissions of Oyer and Terminer, and the subsequent act is only an act of confirmation; but Cook ought to be excused for all his notes and papers were taken from him, so that this book did not receive his last hand, but 'tis observable he was one of the Members of the Parliament, 1 Car. I. When the special act before-mentioned, and was made, and no instance can be given where an act was passed; and afterwards the Parliament did proceed in that session only where there was a precedent agreement between the King and the Houses; so I conclude that the order is determined with the session, and the Earl of Shaftsbury ought to be discharged.

Ayres to the same effect argued, That the warrant is not sufficient; for it does not appear that it was made by the jurisdiction is desired in the House of Peers; for that is *coram Rege in Parlamento*, so that the King and the Commons are present in supposition of law, and the writ of Error in Parliament is *Inspecito recordo nos consilio & advisamento spiritualium et temporalium, et communitatum in Parlamento predicti existent*, &c. it would not be difficult to prove that anciently the Commons did as-

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sit there; and now it shall be intended that they were present; for there can be no averment against the record. The Lords do several acts as a distinct house, as the "Debating Bills," the "Enquiring of breaches of privileges," and the warrant in this case being by the Lords spiritual and temporal, cannot be intended otherwise, but that it was done by them in their distinct capacity, and then the commitment being during the pleasure of the King and the House of Peers, it is manifest that the King is principal, and his pleasure ought to be determined in this Court.

If the Lords should commit a great minister of state, whose advice is necessary for the King and the realm, it cannot be imagined that the King shall be without remedy for his subject, but that he may have him discharged by his writ out of this Court.

This present recess is not ordinary adjournment; for it is entered in the Journal that the Parliament shall not be assembled at the day of adjournment, but adjourned or prorogued to another day, if the King do not signify his pleasure by Proclamation.

Some other exceptions were made to the return.

1. That no commitment is returned, but only a warrant to the constable to receive him.

2. The return does not answer the mandate of the writ; for that it is to have the body of A. E. of S. and the return of warrant for the imprisonment of A. Ashley E. of S.

Serjeant Maynard argued to maintain the return; "The House of Lords is the supreme Court of the realm; 'tis true this court is superior to all courts of ordinary jurisdiction; if this commitment had been by any inferior Court, it could not have been maintained; but the commitment is by a court that is not under the controul

of this court; and that court is in law sitting at this time, and therefore the expressing the contempt particularly, is a matter that continues in the deliberation of that court: 'Tis true, this court ought to determine what the law is in every case that comes before them, and in this case the question is only, whether this court can judge of a contempt committed in Parliament during the same session of Parliament, and discharge one committed for such contempt. When a question of privilege ariseth in an accord depending in this court, the court may determine it; but now the question is, Whether the Lords have capacity to determine their own privileges, and whether this court can controul their determination, and discharge during their session a Peer committed for contempt. The Judges have often demanded what the law is, and how a statute should be expounded of the Lords in Parliament, as on the Statute of Amendments, 40 Edw. III. 34. 6. 8 Co. 157, and 158. *a fortiori*. The Court ought to demand their opinion, when a doubt ariseth on an order made by the House of Lords now sitting."

As to the determination of the imprisonment, doubtless the pleasure of the King is to be determined in the same Court where the judgment was given.

As to the determination of the session, the opinion of Cooke is good law, and the addition of promises of many acts, is only *in majorem cautelam*.

Sir Will. Jones, Att. Gen. To the same effect, as to the uncertainty of the commitment, it is to be considered that this case differs from all other cases in two circumstances: 1. The person which is committed is a Member of the House by which he is committed (I do not take upon me to say that the case would be different if the person committed were not a Peer.) 2. The Court that does commit is superior to this Court.

Court, and therefore if the contempt had been particularly shewn, of what judgment soever this Court should have been as to the contempt, yet they would not have discharged the Earl, and thereby take upon them a jurisdiction over the House of Peers.

The Judges in no age have taken upon them the judgment of what is *Lex et consuetudo Parliamenti*; but here the attempt is to engage the Judges to give their opinion in a matter whereof they might have refused to have given it. If it had been demanded in Parliament, 'tis true, if a writ be brought where privilege is pleaded, the Court ought to judge of it as an incident to the suit whereof the Court was possessed; but this will be no warrant for this Court to assume a judgment of an original matter arising in Parliament, and that which is said of the Judges power to expound statutes, cannot be denied.

But it is not applicable to this case; by the same reason that this commitment is questioned, every commitment of the House of Commons may be likewise questioned in this court. It is objected, that there would be a failure of justice if the Earl should not be discharged; but the contrary is true; for, if he be discharged, there would be a failure of justice for offences in Parliament, and therefore the Earl would be discharged from all manner of punishment for his offence, if he be discharged (for he must be discharged or remanded; for the Court cannot bail but where they have a jurisdiction of the matter) and so delivered out of the hands of the Lords, who only have power to punish him.

It is objected, that the contempt is not said to be committed in the House of Peers, but it may well be intended to be committed there; for it appears he is a Member of that House, and that the contempt was against the House; and besides there

are contempts whereof they have cognizance, though they are committed out of the House. It is objected, that 'tis possible this contempt was committed before the general pardon; but surely such injustice shall not be supposed in the supreme court, and it may well be supposed to be committed, during the session in which the commitment to prison was.

It would be great difficulty for the Lords to make their commitments so exact and particular, when they are employed in the arduous affairs of the realm; and it has been adjudged on a return out of Chancery, of a commitment for a contempt against a decree that it was good, and yet the decree was not shown.

The limitation of the imprisonment is well, for if the King or the House determine their pleasure, he shall be discharged, for then 'tis not the pleasure of both that he should be detained, and the addition of those words "during the pleasure," is no more than was before implied by the law; for if those words had been omitted, yet the King might have pardoned the contempt, if he had but expressed his pleasure under the broad seal. If a judgment be given in this court, that one shall be imprisoned during the King's pleasure; his pleasure ought to be determined by pardon, and not by an act of this court, so that the King would have no prejudice by the imprisonment of a great Minister, because he could discharge him by a pardon. The double limitation is for the benefit of the prisoner, who ought not to complain of the duration of his imprisonment, since he has neglected to make application for his discharge in an orderly way.

I confess by the determination of the session, the orders made the same session are discharged, but I shall not affirm whether this present order will be discharged or no, because it is a judgment. But this is not the present case, for the session continues notwithstanding

notwithstanding the royal assent given to several bills, according to the opinion of Cook and all the Judges. Hutton 61, 62. Every proviso in an Act of Parliament is not a determination of what was the law before; for they are often added for the satisfaction of those that are ignorant of the law.

Turner Solicitor Gen. To the same effect, in the great case of *Mr. Selden*, 5 Car. 1. the warrant was for notable contempts committed against us and our government, and stirring up sedition; and although that be almost as general as that in our case, yet no objection was made to it for that cause in any of the arguments, *Rushworth's Collections*, 18 and 19, in the appendix. But I agree that this return could not have been maintained if it were out of an inferior court, but during the session this court can take no cognizance of the matter, and the inconvenience would be great if the law were taken otherwise; for this court might judge one way, and the House of Peers another: which doubtless would not be for the advantage and benefit of the subject. For the avoiding of this mischief, it was agreed by the whole court in the case of *Barnardiston and Somes*, that the accord for the double return could not be brought in this court until the Parliament had determined the right of election, lest there should be a difference between the judgments of the courts.

When a judgment of the Lords comes to this court, though it be of a reversal of a judgment of this court, the court is obliged to execute it; but their judgment was never examined or corrected here. In the case of the *Lord Hollis*, it was resolved that this court had no jurisdiction of a misdemeanor committed in Parliament; when the Parliament is determined, the Judges are the expositors of the acts, and are intrusted with the lives, liberties, and fortunes of the subject, and if the session

were determined, the Earl might apply himself to this court, for the subject shall not be without a place, where he may resort for the recovery of his liberty, but this session is not determined: For the most part the royal assent is given the last day, as saith *Plowden*, *Partridge's Case*; yet the giving the royal assent, does not make it the last day of Parliament without a subsequent resolution or prerogative, and the court judicially takes notice of prorogation and adjournments of Parliament. *Cro. Jac. 111. Ford versus Huntten*, and by consequence no order is discontinued, but remains as if the Parliament were actually assembled. *Cro. Jac. 342. Sir Chr. Hauden's case*, so that the Earl ought to apply himself to the Lords, who are his proper Judges.

It ought to be observed, That this attempt is *Prime Impressionis*, and though Imprisonment upon contempt hath been frequent by the one and the other House, till now no person ever sought enlargement here: The court was obliged in justice to grant the *Habeus Corpus*, but upon the whole matter being disclosed, it appears upon the return, that the cause belongs *ad aliud examen*; they ought to remand the party.

As to the limitation of the imprisonment, the King may determine his pleasure by a pardon under the great seal of England, as in the case of *Reinger and Flagoffa, Plowden 20.*

As to the exception that no commitment is returned, the Constable can only shew what concerns himself, which is the warrant to him directed; and the writ does not require him to return any thing else.

As to your exception, that he is otherwise named in the commitment than in the writ: The writ requires to have the body of A. Earl of S. *Quocunque nomine Censeatur* in the commitment.

After.

After this, my Lord Shaftsbury made a Speech; the substance thereof followeth.

My Lords,

I DID not intend to have spoke one word in this business, but something hath been objected, and laid to my charge by the King's council, Mr. Attorney and Mr. Solicitor, that enforceth me to say something for your better satisfaction. They have told you that my counsel in their arguments said, That this court was greater than the House of Peers, which I dare to appeal to your Lordships and the whole court, that it was never spoken by them, I am sure was not by any directions of mine. What is done by my counsel, and by me, is, That this is the most proper court to resort unto, where the liberty of the subject is concerned. The Lords House is the supreme house of judicature in the kingdom; but yet there is a jurisdiction that the Lords House does not meddle with. The King's counsel hath mentioned, as a wonder, That a member of the Lords House should come hither to diminish the jurisdiction of the Lords. I acknowledge them to be superior to this, or any other court, to whom all appeals and writs of error are brought; and yet there are jurisdictions that they do not challenge, and which are not natural to them, or proper for them. They claim not to meddle in original causes, and so I might mention in other things; and I do not think it a kindness to any power or body of men, to give them some power that are not natural or proper to their constitution. I do not think it a kindness to the Lords to make them absolute and above the law, for so I humbly conceive this must do, if it be adjudged that they by a general warrant, or without any particular cause assigned, do commit me; or any other

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man, to a perpetual and indefinite imprisonment: And, my Lords, I am not so inconsiderable a person, but what you do in my case, must be law for every man in England.

Mr. Attorney is pleased to say, I am a member of the Lords House, and to lay weight on the word Member. It is very true, I am one of them, and no man hath a greater reverence or esteem for the Lords than myself; but, my Lords, I hope my being a peer, or a member of either House, shall not lose my being an Englishman, or make me have less title to *Magna Charta*, and the other laws of English liberty.

My opinion is not with one of my counsel, who argued very learnedly, That the passing an act by the King's royal assent can make a sessions, because the usual promise was not in it. It was without any instruction of mine to mention that point.

The King's counsel tells your Lordships of the laws and customs of Parliament; and if this was so, I should submit: But this case of mine is *Præ Impressionis*, and is a new way, such as neither Mr. Attorney nor Mr. Solicitor can shew any precedent of, and I have no other remedy nor place to apply to than the way I take.

Mr. Attorney confesseth that the King's pleasure may please me without the Lords. If so, this court is *Coram Rege*. This court is the proper place to determine the King's pleasure. This court will and ought to judge of an act of Parliament void, if it be against *Magna Charta*, much more may judge an order of the House, that is put in execution to deprive any subject of his liberty. And if this order of commitment be a judgment, as the King's counsel affirms, then it is out of the Lords hands, and properly before your Lordships, as much as the acts which were lately passed, which I presume you will not refuse to judge of, notwithstanding that the King's Attorney General saith that this Parliament

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liament is still in being. I take it something ill that Mr. Attorney tells me I might have applied elsewhere.

My Lords, I have not omitted what became my duty towards the King; for besides the oath of allegiance I took as a Peer, or an Englishman, there is something in my breast that will never suffer me to depart from the duty and respect that I owe him; but I am here before him, he is always supposed to be here present, and he alloweth his subjects the law.

My Lords, they speak much of the custom of Parliament; but I do affirm to you, there is no custom of Parliament that ever their members were put out of their own power; and the inconveniences of it will be endless.

Mr. Attorney was pleased easily to answer the objection of one of my counsel: If a great minister should be so committed, he hath the cure of a pardon, a prorogation, or a dissolution: but if the case should be put, why forty members, or a greater number, may not as well be taken away without remedy in any of the King's courts, he will not so easily answer; and if in this case there can be no relief, no man can foresee what will be hereafter.

I desire your Lordships well to consider what rule you make in my case, for it will be a precedent that in future ages may concern every man in England.

My Lords, Mr. Attorney saith you can either release or remand me; I differ from him in that opinion. I do not insist upon a release: I have been a prisoner above five months already, and come hither of necessity, having no other way to get my liberty, and therefore am very willing to tender your Lordships bail, which are in or near the court, good as any are in England, either for their quality or estate, and I am ready to give any sum or number.

My Lords, this court being possess'd of this business, I am now your prisoner.

The court delivered their opinion *seriatim*.

Sir *Tho. Jones*, Justice. Such a return made by an ordinary court of justice, would have been ill and uncertain; but the cause is different when it comes before this high court, to which so much respect has been paid by our predecessors, that they have deferred the determination of doubts conceived on an act of Parliament, until they have received the advice of the Lords: and now, instead thereof, it is demanded of us to controul the judgment of all the Peers, and given on a member of their own House, and during the continuance of the same session. The cases where the courts of Westminster have taken cognizance of privilege, differ from this case; for in those it was only an incident to the case before them, which was of their cognizance; but the direct point of the matter is now the judgment of the Lords.

The course of all courts ought to be considered, for that is the law of the court, *Lane's case*, 2 Rest. and it has not been affirmed, That the usage of the House of Lords has used to express the matter more particularly on commitments for contempts, and therefore I shall take it to be according to the course of Parliament, 4 Inst. 50. It is said that the Judges are assistants to the Lords, to inform them of common law; but they ought not to judge of any law, custom, or usage of Parliament.

The objection as to the continuance of the imprisonment, has received a plain answer, for it shall be determined by the pleasure of the King, or of the Lords: and if it were otherwise, yet the King could pardon the contempt under the great seal, or discharge the imprisonment under the privy seal.

I shall not say what would be the consequence (as to this imprisonment) if the session were determined, for that is not the present case: but as the case is, the court can neither bail nor discharge the Earl.

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Wild Justice. The return no doubt is illegal; but the question is of a point of jurisdiction, Whether it may be examined here? This court can't meddle with the transactions of the most high court of Peers in Parliament, during the session, which is not determined; and therefore the certainty or uncertainty of the return is not material, for it is not examinable here: but if the session had been determined, my opinion would be, that he ought to be discharged.

Rainsford Chief Justice. This court has no jurisdiction of the cause, and therefore the form of the return is not considerable. We ought not to extend our jurisdiction beyond its due limits, and the actions of our ancestors will not warrant us in such an attempt.

The consequence would be very mischievous if this court should deliver a Member of the House of Peers and Commons who are committed, for thereby the business of Parliament may be retarded; for it may be the commitment was for evil behaviour, or undecent reflections on other Members, to the disturbance of the affairs of Parliament.

The commitment in this case is not for safe custody, but he is in execution of the judgment given by the Lords for the contempt; and therefore if he should be bailed, he would be delivered out of execution; for a contempt *in facie curie* there is no other judgment or execution.

This court has no jurisdiction, and therefore he ought to be remanded. I deliver no opinion whether it would be otherwise in case of a prorogation.

Twisden Justice, was absent, but he desired Justice Jones to declare that his opinion was, That the party ought to be remanded.

And so he was remanded by the court; and he was accordingly sent back to the Tower, where he remained seven months longer, and then was discharged on making his submission in the House of Peers. His offence was, his affirming, That the House was dissolved by having been prorogued for above a year; in which notion the Duke of Bucks, the Earl of Salisbury, and the Lord Wharton, concurred, and were all sent to the Tower for asserting it; but the rest acknowledging their error, were soon dismissed; while Shaftesbury, for persevering in that notion, drew upon himself the resentment of the court, as well as of the House, and was continued a year in prison.

This case of commitments by either House, seems now to be fully settled: Where either House commits any of their respective Members, the King's Bench will neither discharge or bail them during the session; but on a prorogation, or dissolution, the persons so committed are discharged of course.

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The Trial of PHILIP, EARL of PEMBROKE and MONTGOMERY, before the PEERS, in Westminster-Hall, on Thursday the 4th of April, 1678.

ABOUT nine of the clock the prisoner with his guard came from the Tower, with the ax before him, and went into the room appointed for him. Between the hours of eleven and twelve at noon, the Lords, Judges, and assistants of the House, came in order, two and two, from the House of Lords, to the court erected in Westminster-Hall, with four maces before them, and before the Lord High-Steward four more, besides his own Serjeant and Purse-bearer, with Garter King at Arms, and the Deputy Black-rod bearing the white staff. After obeisance made to the throne, each Lord, and the others, took their places, the Serjeants, with their maces erect, kneeling, four on each side of the throne.

Then the Clerk of the Crown in Chancery on the right hand, and the Clerk of the Crown in the King's-Bench on the left hand, making three reverences to the Lord High-Steward, came up to his seat, and there both kneeling, the Clerk of the Crown in Chancery delivered the commission for the office of High-Steward (*pro hac vice*) to his Grace, who delivered it to the Clerk of the Crown in the King's-Bench to read, and then they both in the same manner went back to their seats at the table.

Then the Clerk of the Crown in the King's-Bench said as followeth.

Clerk of the Crown. Serjeant at Arms make proclamation.

Serjeant at Arms. O yes, O yes, O yes: My Lord High-Steward of England straitly chargeth and commandeth all manner of persons here assembled, to keep silence,

and give ear to his Majesty's Commission, unto my Lord High-Steward, his Grace directed, upon pain of imprisonment.

Then all the Peers and assistants standing up, and uncovered, he read the commission *in hæc verba*.

Clerk of the Crown. Carolus, &c.

Serjeant. God save the King.

Then Garter and the Usher that held the staff, making three reverences to his Grace, Garter on his knees presented him the white staff, which his Grace delivered to the Usher, who likewise kneeled to hold the same, during the rest of the ceremony.

Clerk of the Crown. Serjeant at Arms make proclamation.

Serjeant. My Lord High-Steward of England, his Grace straitly chargeth and commandeth all manner of persons here present, to be uncovered, upon pain and peril shall fall thereon.

Then the Clerk read the *Certiori* to the commissioners, before whom the indictment was found, to return the same into the House of Lords, with the return *in hæc verba*.

Clerk of the Crown. Carolus, &c. Virtute, &c. Serjeant at Arms make proclamation.

Serjeant. O yes: Constable of the Tower of London return thy precept and writ to thee directed, and bring forth thy prisoner, Philip, Earl of Pembroke and Montgomery, on pain and peril shall fall thereon.

The Constable of the Tower of London being a Peer, by Sir John Robinson his Lieutenant returned his precept, and with the ax borne on his left hand, the edge from him, the Earl of Pembroke was brought.

brought to the bar, the Lord High-Steward of England having then ordered the Judges to be covered, spake to the prisoner as followeth.

Lord High Steward. My Lord of Pembroke your Lordship is now brought before this great assembly in order to your trial, wherein you have to maintain all that can concern you in this world, your estate, your honour, and your life itself. There is no less a crime charged on you, than the murder of one of the King's subjects, and this is not charged on you by common voice and fame, nor by the growing rumour of the multitude, but by the grand inquest of this county, which was made up of gentlemen of good quality and consideration. Though all this amount to no more than a bare accusation, (for God forbid that they who neither did nor could hear the evidence on both sides, should any way prejudge your trial by their partial examination) yet it hath produced the presentment of such a crime, as is attended with extraordinary and unusual circumstances.

And now for this fact your Lordship is to be tried in full Parliament, and your arraignment is to be made as full and as solemnly as is possible. The King (who will have a strict account of the meanest of his subjects, by whomsoever it is shed) hath for this purpose appointed an High-Steward: And now your Lordship is to be tried not by a select number of Lords, but by the whole House of Peers, whom are met together to make inquisition for this blood.

Doubtless the shame of being made a spectacle to such an assembly as this, and the having a man's faults and weaknesses exposed to the notice and observation of such a presence as this is, to a generous mind must needs be a penance worse than death itself; for he that outlives his own honour, can have very little joy in whatsoever else he lives to possess.

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In such a state and condition as this is, it will be very fit for your Lordship to recollect yourself with all the care and caution you can; it will be necessary for you to make use of the best temper, and the best thoughts you have, when you come to make your defence; let not the disgrace of standing as a felon at the bar, too much deject you; no man's credit can fall so low, but that if he bear his shame as he should do, and profit by it as he ought to do, it is in his own power to redeem his reputation. Therefore let no man despair, that desires and endeavours to recover himself again, much less let the terrors of justice affright you; for though your Lordship have great cause to fear, yet whatever may be lawfully hoped for, your Lordship may expect from the Peers.

It is indeed just cause of dreadful apprehensions, when you consider how strict and impartial the judicature is which you stand before, and how impossible it is that any consideration of your Lordship's relation or family, shall have any kind of ingredient into their Lordships judgment; nay, you have cause to fear all this will make against you, when you consider how the quality of the offender doth aggravate the crime.

You have reason to fear and be dismayed again, when you consider how severe, and how inexorable the rule of law is, in the case of blood; and how certain it is that the Lords will make that rule of law the measure of your life or death: But yet, my Lord, there are other considerations that may support you.

Your Lordship may be sure that they will receive no proof against you, but direct and positive evidence; it will not be left to any proof, but such proof, as by the manifest plainness of it, deserves to be called evidence. In the next place, your Lordship shall suffer no prejudice for want of counsel, for where there are any advantages that the law can give you, this court

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takes itself obliged in honour to put you in mind of it; nor can your Lordship suffer an inconvenience, by having counsel to plead against you, for no arguments nor skill can pervert their Lordships justice; you shall not fall by the charms of eloquence; nothing shall load or press you but your own crime, and even that burthen may be alleviated, if there be any room for an abatement, so far as it doth not contradict what they owe to the King, to themselves, to the law, and to the justice of the kingdom.

Hearken therefore (my Lord) to your indictment with patience and attention, give no interruption to the counsel or witnesses that speak against you, and reserve what you have to say for yourself till the time come, when your witnesses shall be examined, and you make your defence, of which I will give you notice. And this you may rely upon, that when you do come to speak for yourself, you shall be heard with as much favour and candor as the matter will bear; and when my Lords have heard all that can be said on both sides, doubtless their Lordships will give such a judgment in the case, as is fit for you to receive, such a judgment as becomes this great court, and such a judgment as is suitable to that known equity, which their Lordships do always observe in all their proceedings.

Lord High-Steward. Read the indictment to my Lord.

Clerk of the Crown. Philip Earl of Pembroke and Montgomery, hold up your hand.

Which he obeyed by holding up his right hand.

Cl. of Cr. You stand indicted by the name of Philip, Earl of Pembroke and Montgomery, late of the parish of St. Martin's in the Fields, in the county of Middlesex, for that you not having the fear of God before your eyes, but being

moved and seduced by the instigation of the devil, the 4th of February, in the 30th year of the reign of our Sovereign Lord Charles the Second, by the grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one Nathaniel Cony, Gent. in the Peace of God, and of our said Sovereign Lord the King, then and there being, feloniously, voluntarily, and of your malice forethought, did make an assault; and that you the said Philip, Earl of Pembroke and Montgomery, with the right fist of you the said Philip, &c. the said Nathaniel Cony, in and upon the left part of the head of the said Nathaniel Cony, then and there feloniously, wilfully, and of your malice aforethought, did strike and bruise, and him the said Nathaniel Cony, with your right fist aforesaid, did beat and throw down to the ground; and that you the said Philip, &c. the said Nathaniel Cony so lying upon the ground, in and upon the head, neck, breast, belly, sides and back, of him the said Nathaniel Cony, then and there feloniously, wilfully, and of your malice before-thought did strike and kick, by reason of which said kicking and bruising of the said Nathaniel Cony, on the said left part of the head of the said Nathaniel Cony, with the said fist of you the said Philip, &c. and of the beating and throwing him to the ground aforesaid; and also by reason of kicking of the said Nathaniel Cony with the said feet of you the said Philip, &c. on the head, neck, breast, belly, sides and back of the said Nathaniel, he the said Nathaniel Cony, from the aforesaid 4th day of February in the aforesaid year, to the 10th of the same month of February, in the parish aforesaid, did languish, and languishing did live; on which said 10th day of February in the year aforesaid, he the said Nathaniel Cony, of the

the striking and bruising, beating and kicking, died; and so you the said Philip, &c. the said Nathaniel Cony, at the parish aforesaid, in the county aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of your malice forethought, did kill and murder, against the peace of our said Sovereign Lord the King, his crown and dignity. How say you, Philip, Earl of Pembroke and Montgomery, are you Guilty of this felony and murder whereof you stand indicted, or Not Guilty?

E. of Pemb. Not Guilty.

Cl. of Cr. Culprit, How will you be tried?

E. of Pemb. By my Peers.

Cl. of Cr. God send you a good deliverance. Serjeant at Arms, make proclamation.

Serj. O yes, If any one will give evidence for our Sovereign Lord the King, against Philip, Earl of Pembroke and Montgomery, the prisoner at the bar, let them come forth, and they shall be heard, for the prisoner stands at the bar upon his deliverance.

Then Sir William Dolben, Knt. the King's Serjeant at Law, Recorder of the City of London, opened the indictment thus:

Sir William Dolben. May it please your Grace, my Lord High-Steward of England, and the rest of my noble Lords.

Philip, Earl of Pembroke and Montgomery, stands indicted, for that he, the 4th day of February last, in the parish of St. Martin's in the Fields, in the county of Middlesex, of his malice forethought, did make an assault upon one Nathaniel Cony, in God and the King's peace there being; and that he the said Philip, Earl, &c. with his right fist, on the left part of the head of the said Nathaniel, then and there feloniously did strike and bruise, and with his right fist aforesaid, him did cast and thrown down to the ground, and being

so on the ground with his feet did kick and strike, of which said striking, bruising, and kicking, the said Nathaniel Cony, from the said 4th of February, to the 10th of February following, did languish, and then died; and so the jurors do upon their oaths say, That the said Philip, Earl of Pembroke, &c. the said Nathaniel Cony, at the parish and county aforesaid, feloniously, wilfully, and of his malice forethought, did murder, against the King's peace, his crown and dignity. To this indictment the Earl of Pembroke hath pleaded Not Guilty, and put himself upon his Peers for his trial: We who are of counsel for the King, shall produce our evidence to confirm this accusation, with what it is, and of what nature, his Majesty's Attorney-General will acquaint your Grace, and the rest of you my noble Lords.

Then Sir William Jones, Attorney-General, (who being called by writ, as assistant to the House, was within the bar) opened the evidence to this effect.

Att. Gen. May it please your Grace, my Lord High-Steward of England, and the rest of my noble Lords; Philip, Earl of Pembroke and Montgomery stands here indicted for the murder of Nathaniel Cony: That my Lord of Pembroke was the cause of his death, I humbly conceive will need very little question before your Lordships, for we have such proof that it was his hand threw him down, and his feet that trod upon him and kicked him, which was the cause of his death, that it cannot be denied: but whether or no this killing amount to murder, may be a matter of further controversy; and I hold it my duty to acquaint your Grace and my Lords, what the proof is, and then what we have to offer to prove it to be an offence even of this nature.

My Lords, I know to maintain an indictment of murder, there must be a proof of malice; but the law is plain (your Lordships

ships know it, and my Lords the Judges will tell it you) that there are two sorts of malice, the one is malice expressed, and that is when a man can be proved to have borne before hand an ill will and hatred to the person he killed; this sort of malice we pretend not to be in this case: But there is another sort of malice, which also in law gives the denomination of murder to the killing of a man, which is malice implied, when any one shall without any provocation given by the party slain, bring another by violence to his death: For our law supposeth, and that upon good ground, that no man without a provocation would kill his brother, unless he had malice to him before-hand; and that is the malice that falls out to be the ingredient of this case, for the poor unfortunate gentleman that was killed, did not for ought that did appear to me, (and I have had all the proof given at the Coroner's inquest under my examination) give the least provocation to this noble Lord. Some have thought that a person might be guilty of malicious murder, though the party killed had given the murderer a blow; but I shall not contend for so strict a construction of a provocation, for there was not in this case a blow struck, no nor an angry word given: all that I can find came from Mr. Cony, was, to complain that a friend of his that came into the company with him, was turned out of doors; and sure such a thing will never be taken to be a provocation, at leastwise such a one as will take away malice implied. I shall now (my Lord) give your Lordships an account of the nature of our evidence, as to the fact, and that (my Lords) in short; for as I shall not use any aggravation above what the cause requires, so I shall not tire your Grace, and my Lords, with any long speech, but barely open the evidence, and tell you in short what will come in proof before you.

It was on Sunday the 3d of February, that my Lord of Pembroke and his company were drinking at the house of one Long in the Hay-Market, (I am sorry to hear the day was no better employed by them) and it was the misfortune of this poor gentleman, together with one Mr. Goring, to come into this house to drink a bottle of wine; my Lord of Pembroke saw them coming in, and knowing Mr. Cony, was very importunate with him to join company: he at first refused, because of his friend, and told his Lordship they had business together; but no denial he would take, and so at last they did go into my Lord's room. After some distance of time, when it was near twelve of the clock at night, there fell out a difference between my Lord and Mr. Goring, (the gentleman that came in with Mr. Cony) who (it seems) gave my Lord of Pembroke some words, which provoked him to express his distaste of them, by throwing a glass of wine in his face; which injury Mr. Goring so far resented, as that he was about to draw his sword, but was prevented by some of the company, and put out of the room to avoid further mischief. This gentleman Mr. Cony that was killed, was not at all concerned in the matter of the difference, but only desired to go out of the room, that he might look after his friend who was thrust out of doors. He knew not why, (without any provocation, as you will hear by and by) my Lord of Pembroke falls upon him, strikes him with one blow to the ground, and when he was there trod upon him on his back, on his belly, on his side, and kicked him, so that the poor gentleman fell into a swoon, and was after some time, with some difficulty brought to himself again: after they had perceived there was life in him, they lifted him up, and laid him down on some chairs that were in the room, and thinking too much had been done by them already, they take their leaves of him, and

and commit him to the care of the drawer. He was not (as it should seem) so carefully attended by the drawer, whose ignorance could not look after him as his condition required, and so fell down off the chairs again divers times. After some time, early in the morning, he was carried away in a sedan to his own lodging, and being there put to bed, as he grew a little more and more recovered out of his stupefaction, so he grew more and more in pain, and sent for doctors and chirurgeons to consult with, by whom he had all the means used that was possible to have saved his life; but it proved there was so much blood forced out of his veins, and gathered into one place of his body, by those blows and bruises, that he could not be recovered, and so after a weeks time passed in intolerable pain, died: But yet all the time of his dying, and even constantly to his death, he did complain that it was my Lord's bruises brought him into that condition. It will also be proved, that after his death, upon view of the body by the coroner and his jury, there was the appearance of those blows and abuses, by broad bruises in several parts of the body, and this some of the jury will testify. This in short is the matter of the evidence, which we shall briefly prove, and then submit it all to your Lordships judgment.

L. H. St. Call the witnesses together, and speak out Mr. Attorney.

Att. Gen. Those we shall call first are Mr. Henry Goring, Mr. Richard Savage, Mr. John Shelly, and Capt. Fitz-Patrick.

Cl. of Cr. The evidence which you and every one of you shall give for our Sovereign Lord the King, against Philip Earl of Pembroke and Montgomery, the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth: So help you God.

L. H. St. Mr. Attorney, whom do you begin with?

Att. Gen. Mr. Henry Goring.

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L. H. St. Stand forward, Goring.

Att. Gen. Pray Sir acquaint my Lords of the manner of your coming with Mr. Cony to Mr. Long's, and what happened there.

L. H. St. Sir, you must speak so loud that I may hear.

Goring. May it please your Grace, Mr. Cony and I did on Sunday the 3d of February last, dine in the city, we stayed very late there, and I must ingenuously confess, we had drank more than was fit for us to have done; after that (if it please your Grace) I offered to set down Mr. Cony at his lodgings, but he was so very ceremonious, that he would see me at home; it seems Long's house, the tavern in the Haymarket, was in the way, and Mr. Cony would needs have us drink another bottle of wine ere we parted: It was late, and the door shut, but we knocking pretty hard for admittance, did get it opened, and as soon as the door was opened, Mr. Cony went towards the bar, and made some noise, being in drink; my Lord of Pembroke was then in a low room in the house, and knowing Mr. Cony, (as I thought) came and asked him, if he would come in and drink with him; he replied, My Lord, I am with a friend, and we have some business together: At length my Lord asked me very civilly to come in, and we did after some time come in, and when we were in, my Lord drank to me, as I remember, and we stood round the table a-while, and at last sat down in some chairs, for we were not so much ourselves as to be able to stand all the while; then there was, it seems, some dispute between my Lord of Pembroke and me, wherein my Lord did conceive I had done him some injury, and threw a glass of wine in my face.

Att. Gen. What kind of discourse was that, pray Sir?

Goring. Truly (may it please your Grace) I cannot remember all the discourse, because I was so much in drink at that time;

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they say, it was about families and play, I cannot positively say what it was; but after my Lord of Pembroke rose up to draw his sword, and I laid my hand on mine.

Att. Gen. Well Sir; and what followed then?

Goring. Captain Savage stept in between my Lord and me, and the drawer came bustling about, and took me and shoved me out of the room; while I was thrusting out I heard a noise behind me, and I see my Lord make somewhat towards Mr. Cony; but more I cannot say what was done, because Mr. Savage was between my Lord and me. When I was out of the room, I found my sword gone, and my hat and perriwig; I then made a noise at the door, and would not go away till I had recovered my things; the man of the house (who was in bed, it seems, for he was then undrest, and in his night-gown) came and asked me what was the matter? I told him, I had been in that room with my Lord of Pembroke, where I had received some ill usage, and had lost my hat and perriwig; and they had broken a piece of my sword, and taken it from me, which I desired to have again; and (said I) Mr. Cony, I doubt, is in danger, for there is quarrelling within, and I desired to come in to see what they did with him.

Att. Gen. Well Sir, when you came in, what then?

Goring. Upon this, the master of the house did desire me to go into a room, and a gentlewoman (his sister, as I after understood) did also press me to go into another room, and promised they would bring Mr. Cony to me; upon which I went into a room thereby, but it was something long before I heard from them; and being under some impatience, they at last, came and told me, Now, Sir, you may go in, if you please: when I came in, I found a gentleman lying along upon the chairs, and nobody else in the room; I began to be

suspicious (for I was then, as I thought, somewhat soberer) that he had some wound, and took the candle and walked about him, and would fain have awakened him, but could not by all my endeavours; the drawer told me, he was only dead-drunk, and would in a little time come to himself; upon which I desired them to lay some blankets upon him, and some pillows under him, and set some more chairs, to make the place broader, that he might not fall down; and I ordered the drawer to be sure to watch with him till he awaked, and make a good fire, which he promised to do.

The next day Mr. Cony sent to my lodging to come and see him, but I did not that day, because I did go out early, and did not return till late; but the very next day after, (being Tuesday) when I came to him, Harry, (said he) I was very much abused the other night in my Lord's company; I am sorry for that (said I) with all my heart; and I asked him, how he came to be abused; My Lord of Pembroke (said he) threw me down, and there somebody trod upon me and kicked me, and he shall know that he has abused me, and that I expect satisfaction for it, I hope you will let him know so much, and carry him a challenge from me: Mr. Cony, (said I) who did tread upon you? I know not, (said he) for I was in a swoon, either my Lord of Pembroke, or some of his creatures for him. I never had the honour to know my Lord of Pembroke before, nor above one or two of the gentlemen that were with him then in the company.

Att. Gen. Sir, had you any discourse with him afterwards?

Goring. Yes, every day till Thursday at night.

Att. Gen. Did he complain of much pain?

Goring. Yes, constantly in his belly, his sides, and his shoulders.

Att. Gen.

Att. Gen. What did he tell you was the cause of his death?

Goring. He said it was my Lord of Pembroke that had done him the injury in throwing him down; who trod on him, or kicked him, he could not tell, but said, my Lord should answer for it to him.

Att. Gen. Do you remember what part he complained of most?

Goring. His belly.

Att. Gen. And what else?

Goring. I think his side and shoulders.

Att. Gen. What distance of time was it between your being thrust out of the room, and your coming in, and finding him upon the chairs?

Goring. About half an hour.

L. H. St. Mr. Goring, you say you saw no stroke given by my Lord of Pembroke to Mr. Cony.

Goring. No truly, may it please your Grace, I saw my Lord make towards him, but Mr. Savage was between my Lord and me, and I was put out of the room.

L. H. St. You did not hear Mr. Cony charge my Lord with kicking him, or stamping on him?

Goring. He did not in my hearing charge him with stamping on him, but that he threw him down, and that then some one did kick him.

Att. Gen. My Lords, we have done with this witness.

L. H. St. My Lord of Pembroke, will your Lordship please to ask that witness that spoke last any questions, for now is your time?

E. of P. No, my Lord.

Att. Gen. Then we desire Mr. Savage may be examined: Mr. Savage, pray do you acquaint his Grace and my Lords what you know of this business.

Savage. May it please your Grace, I was in company with my Lord of Pembroke at Mr. Long's house in the Hay-market, when Mr. Cony came in, and making a great

noise at the bar, my Lord of Pembroke being in a lower room, looked out at the door, and seeing who it was, my Lord saluted him very kindly, and told him he was glad to see him, and desired him to walk into his room. Mr. Cony told him he had a friend at the door, and desired his Lordship to admit him, which my Lord embraced very kindly: And then Mr. Cony goes to the door, and calls Mr. Goring, desiring him to come in, and they came together into the room; my Lord desired them to sit down and drink a glass of wine, which they did, and after some time falling into discourse, Mr. Goring began to make use of some impertinent language to my Lord, and amongst the rest told him he was as good, or a better gentleman than he was.

Att. Gen. Goring did?

Savage. Yes, Goring did; upon which my Lord threw a glass of wine in his face, and immediately stepped back and drew his sword: Mr. Goring was going to draw, but I came up to him, and took his sword from him, and broke a piece of it, and upon my persuasion my Lord put up his sword again; but for fear there might be more words, I took Mr. Goring in my arms, and shoved him out of the room: And whilst I was thrusting him out of doors, I heard a noise of a bustle behind me, and leaving the drawer to keep Mr. Goring out, I saw my Lord of Pembroke strike Cony with his right hand, who immediately fell down, and then gave him a kick; and so upon that, finding him not stir, I took Mr. Cony being on the ground, (I and my Lord together, for I was not strong enough to do it myself) and laid him on the chairs, and covered him up warm, and so left him.

Att. Gen. You say my Lord struck him a blow.

Savage. Yes he did strike him.

Att. Gen. On what part?

Savage.

Savage. I suppose on the face.

Att. Gen. You say, Sir, my Lord of Pembroke did kick him when he was upon the ground.

Savage. Yes.

Att. Gen. Did he kick him once, or oftener?

Savage. But once, that I saw.

Att. Gen. Pray Sir, on what part was it?

Savage. Somewhere on the body, but I cannot tell what part.

Att. Gen. With what force did his leg move?

Savage. Not with a very great force.

Att. Gen. How high was his leg lifted up?

Savage. He pushed his leg with a quick motion forwards.

Att. Gen. When you took him up he was senseless, you say; pray Sir, how long was it ere he was brought to life again?

Savage. Two or three minutes.

Att. Gen. What means did you use to bring him to himself?

Savage. We chafed him over the temples, and such things.

Att. Gen. When he came to life again, did he speak?

Savage. He did open his eyes, but did not speak.

Att. Gen. What followed then?

Savage. We laid him upon some chairs gently, for his pulse was almost gone, that we could feel.

Att. Gen. Did his eyes continue open after he was revived?

Savage. Not long; for I asked him if he knew me; he seemed to shake his head, as if he did, and then closed his eyes again.

Att. Gen. Before that accident, what condition was he in? was he able to talk?

Savage. He was very drunk, but he did say something.

Att. Gen. What discourse had he before he was struck down?

Savage. I cannot well remember, but I think he proposed play to my Lord.

Att. Gen. Why did my Lord strike Cony?

Savage. I cannot tell, I was then putting Goring out of the room, and hearing the noise of my Lord's motion towards Cony, I looked back and saw my Lord strike him.

Att. Gen. What language did he use to my Lord, to provoke him to it?

Savage. I cannot tell any at all.

Att. Gen. Did you see Mr. Cony after that time, and what did he then say to you?

Savage. I went two days afterwards to see Mr. Cony, who told me he was then in a pretty good condition. He asked me whether my Lord had struck him? I told him, yes. Truly, said he, I did not know that my Lord had struck me, but finding myself so much in pain, I thought I had fallen, partly through my drink, and partly through my fits I used to have.

Att. Gen. We (my Lord) have now done with this witness.

L. H. St. My Lord of Pembroke, will you ask Mr. Savage any questions?

E. of P. No, my Lord.

L. H. St. Mr. Savage, I think you say you saw my Lord of Pembroke kick him once; in your judgment, was that kick of such force as to give any great bruise?

Savage. I did (my Lord) see him kick him once, but not with any great force, as I conceive.

L. H. St. You did not hear Mr. Cony complain my Lord had kick'd him?

Savage. No; for as I told your Lordship, when I was to see him two days after, he asked me the question, and said he did not know it before.

L. H. St. Mr. Attorney, pray on with your witnesses.

Att. Gen. We shall next call Mr. John Shelly: Mr. Shelly, pray tell his Grace and my Lords your knowledge in this untoward accident.

Shelly.

Shelly. May it please your Grace, I was in the room at Long's, when Mr. Cony and Mr. Goring came in; they were both very far in drink, in so much that Goring could hardly stand, but desired he might have leave to sit down, which he had: Mr. Goring in a little time proposeth play to my Lord, and my Lord told him he would throw with him for 500 l. and was sending away for the money; but then Mr. Goring would not play: I believe (said my Lord to him) you are an idle fellow, that you will propose these things and not pursue them: Upon that Mr. Goring tells my Lord, his name was a better name than his Lordship's, and he a better gentleman than my Lord: Then my Lord takes some wine, and threw in his face; hereupon Mr. Goring steps back, and drew his sword, and my Lord did the same: Captain Savage steps in between them, and keeps my Lord, while Goring was put out of the room: my Lord then desired Mr. Cony to go out with his friend: said he, I do not know upon what account my friend is sent out; whereupon my Lord hit Cony a box on the ear, and that threw him down.

Att. Gen. Pray, Sir, before my Lord struck him, did not Cony give my Lord some ill language?

Shelly. He only said as I told you before, I know not upon what account my friend is turned out of doors.

Att. Gen. Did you see my Lord strike him?

Shelly. Yes.

Att. Gen. Whereabouts?

Shelly. On the head with his fist, or his hand.

Att. Gen. Did he fall at the first blow?

Shelly. Yes.

Att. Gen. Did he afterwards say any thing?

Shelly. No.

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Att. Gen. Did you see my Lord hold up his foot to do it?

Shelly. Yes.

Att. Gen. How high?

Shelly. A pretty height.

Att. Gen. Pray what became of the gentleman afterwards?

Shelly. They took him up in their arms, and laid him upon some chairs.

Att. Gen. Did you see him laid there?

Shelly. Yes.

Att. Gen. Was he senseless when he was taken up?

Shelly. Yes.

Att. Gen. What was the reason do you think that he did not open his eyes, and keep them open?

Shelly. Truly I believe his drink, as well as the blows.

Att. Gen. The one as well as the other.

Shelly. Yes.

Att. Gen. What then did they do with him?

Shelly. They laid blankets upon him, and pillows under him, and laid him upon the chairs.

Att. Gen. How many chairs?

Shelly. As many as reach'd his length.

Att. Gen. Who did you leave him in charge withall?

Shelly. With the drawer.

Att. Gen. Did he speak between the time of his first fall, and your going away?

Shelly. No.

Att. Gen. Did you see him after?

Shelly. Yes, three days after.

Att. Gen. What did he then say to you?

Shelly. That he had a fit, but was pretty well recovered.

Att. Gen. When was it you saw him after that?

Shelly. On the Saturday after, and then he told me the same again.

L. H. St. Did he impute any thing to my Lord of Pembroke?

Shelly. He said nothing at all to me of the
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the ground of his illness, but that which I have told your Grace.

L. H. St. My Lord of Pembroke, will your Lordship ask this witness any questions?

E. of P. No, my Lord.

Att. Gen. Then we for the King desire to examine Mr. Fitz Patrick. Captain Fitz Patrick, pray tell my Lord High-Steward, and my Lords the Peers, what you know.

Fitz-Patrick. My Lord, I was in the room at Long's with my Lord of Pembroke, and my Lord was walking about the room, and he hears a noise without, and steps to the doot, where opening the door half, he saw Mr. Cony at the bar, who was just come in, and seeing my Lord, comes to salute him, my Lord returning into the room, said to him, will you come in and join company? Mr. Cony answered, I have my friend here my Lord, and brings Mr. Goring to my Lord, who saluted him kindly, and desired them both to walk in: Upon which all we that were in the room stood up, and the drawer gave them chairs; after the drinking about of a glass or two, Mr. Goring (both being drunk) said, amongst other discourse, I will drink, I will play, I will fight with any man. Who is this Gentleman, said my Lord of Pembroke, that I should never hear of, or know him? How, said Goring, ('S-blood) not hear of me? My name is Goring, a name and family as good as any Gentleman's in England. There is no body doubts it, said my Lord. Your betters, said Goring; and then my Lord threw the wine in his face; and Goring going to draw, was put out of the room by Mr. Savage, and my Lord, upon some words from Cony, struck him down with his hand.

Att. Gen. What words were those?

Fitz Pat. When I asked my Lord the reason why he struck Cony, he told me, it was because Cony had told him Goring

should not go out of the room till he knew the reason of it.

Att. Gen. Did you hear him say so?

Fitz-Pat. No, not I, but my Lord upon my asking gave that for the reason.

L. H. St. What was the reason?

Fitz-Pat. Because Mr. Cony told him, Goring should not go out of the room, till he knew some reason for it: After my Lord had struck him, I was on the other side of the table, and could not see whether my Lord did stamp on him, or kick him, but I see my Lord's knee stir, and if he did kick him, he kicked him but once, for we ran in and took him up to lay him upon the chairs, and taking his handkerchief out of his pocket to wipe his face, we plucked out of his pocket with it some false dice, which we afterwards put into the hands of Mr. Long, to prove that they intended and proposed play; and after we had laid him on the chairs, and wrapt him up warm we left him.

Att. Gen. How was he after he was taken up?

Fitz-Pat. He open'd his eyes, but being very drunk before, could not keep them open, but shut them again, and we made a bed for him on the chairs, and having wrapt him up warm, we left him, and ordered the drawer to make him a fire.

L. H. St. Did you hear him speak after he was up?

Fitz-Pat. No, my Lord: Mr. Savage spoke to him, and asked him, if he knew him; he only look'd on him, and by a turn of his head seemed to answer him yes.

L. H. St. On the oath you have taken, did you hear him speak to my Lord of Pembroke at any time before he was struck?

Pat. Yes, my Lord, he had spoken before, and I saw his lips make a motion towards my Lord, but what he said, I know no otherwise than as I said before.

L. H. St. My Lord of Pembroke, Will your Lordship ask this witness any questions?

E. of P.

E. of P. No, my Lord.

Att. Gen. We have now, my Lord, done with the witnesses that were by when the fact was committed; by all whom your Lordships hear, the blows were all given by my Lord of Pembroke, and in their company; they are all gentlemen of quality, and therefore, I believe, speak the truth: We will now call some witnesses that were with the unfortunate gentleman in his sickness, whereof one was his physician, another his nurse, and others, who were often with him, and after his death had a view of the body. These will give your Grace and my Lord an account, that he died of those wounds, and bruises he then received; they are these four, Dr. David Bruce, Mr. Thomas Hemes, Mr. Charles Jackson, Alice Avery.

Cl. of Cr. Hearken to me you four. The evidence that you and every of you shall give for our Sovereign Lord the King, against Philip Earl of Pembroke, shall be the truth, the whole truth, and nothing but the truth: So help you God.

D. H. St. Whom do you call first, Mr. Attorney?

Att. Gen. Dr. Bruce, my Lord: Pray Sir acquaint my Lord High-Steward his Grace, and my Lords the Peers, what you know of Mr. Cony's sickness, and the cause of his death, as you apprehend.

Dr. Bruce. May it please your Grace, all that I can evidence in particular of Mr. Cony's sickness was this: On Monday morning after his being in company of the Earl of Pembroke, I was sent for to come to Mr. Cony's lodgings, and about ten of the clock I came; he was then in extremity of pain in both shoulders, so that he could not move, and his pains were so acute, that he could not admit of touching: Upon the abating of those pains by my application the next day, he then began to complain of pains in his belly, but those not so extreme as those in his shoulders; after

some applications thereto, he complained of both, but in a little time was so eased, that he kept well all night, and till nine or ten the next morning. The next day, which was Wednesday, when I came to see him, I told him of the common report of his being kicked; he seemed displeased that such a thing should be reported, and throwing down the bed-cloaths, shewed me his belly, but I could not see any blemish upon it then, either by discolouring or bruising; I found him indeed very backward in receiving remedies, but left him then in a hopeful way of recovery, but I saw him not after, because being sick myself, I could not attend him.

Att. Gen. Did he complain of any hurt about him then?

Bruce. Only in his belly.

Att. Gen. Did you then see his belly?

Bruce. Yes, Sir, for he threw away the cloaths.

Att. Gen. Did you see upon his breast, or any where else?

Bruce. He did not complain of any all there, so I looked not for any thing.

Att. Gen. What did he complain of when you came first to him?

Bruce. Only his shoulders.

Att. Gen. And after his belly?

Bruce. Yes.

L. H. St. Hark you, doctor, what day was that you came to look on his belly, whether he had any bruises or no?

Bruce. Wednesday morning, my Lord.

L. H. St. And then you say upon your oath, you saw there no swelling, or discolouring.

Bruce. None at all, my Lord, I gave it in upon my oath before the coroner, and the same I say now.

Att. Gen. We have done with the doctor, my Lord.

L. H. St. My Lord of Pembroke, will your Lordship examine him to any thing?

E. of P. No, my Lord.

Att. Gen.

Att. Gen. Then there is Mr. Hemes; pray Sir, acquaint my Lords what you know of this gentleman Mr. Cony, and first pray you tell his Grace when you came to him first.

Hemes. It was on Monday morning after this accident, about eight of the clock.

Att. Gen. Did he send for you?

Hemes. Yes, Sir.

Att. Gen. How did you find him when you came?

Hemes. In great extremity of pain, and very sore, complaining of pains over all his body, especially on his shoulders and buttocks. Then the doctor, who came in soon after, did apply plaisters to him, and when he anointed him he was so sore, that he could not endure any one to touch him, nor could we tell how to turn him in his bed, or how to place him so as to apply the ointment, but were fain to get a sheep-skin to wrap him in, and by pillows and a broad joyn-stool, raise him up by degrees: I did then look upon his body, but saw no swelling or bruise there.

L. H. St. Did you see his belly?

Hemes. No, my Lord, but he did complain of an inward grief there.

Att. Gen. When did he first complain of that?

Hemes. The first morning when I came.

Att. Gen. What words did he then use? tell the very words he used, if you can remember them.

Hemes. No, Sir, I cannot; but he complained of a great soreness in his belly, and an inward soreness.

Att. Gen. Where, in what part of his body?

Hemes. In his belly, I say.

Att. Gen. Well, now go on; how long did you continue with him? how many days did you come to him?

Hemes. I came to him every day all along.

Att. Gen. Were you with him till the day he died?

Hemes. Yes; there was indeed a new physician sent for, but I saw him all along usually once a day.

Att. Gen. Did he complain more than once of his belly?

Hemes. Yes, all along from the first morning.

L. H. St. Did you see him opened after he was dead?

Hemes. Yes, my Lord.

L. H. St. What can you say as to what you saw on him then?

Hemes. When he was opened, in the lower part of his belly there was a great deal of blood gathered together on both the hypochondria's, which is not usual; I cannot tell the meaning of it, the physician knows that best.

Att. Gen. Was it congealed black blood?

Hemes. It was of an ugly colour.

Att. Gen. What colour.

Hemes. Of a blackish livid colour.

Att. Gen. Have you observed it often so in others? Have you used to see people opened at other times?

Hemes. No indeed not I; but very seldom.

Att. Gen. Well then, stand down you for we have done with you.

L. H. St. My Lord of Pembroke, have you any thing to say to him?

E. of P. No, my Lord.

L. H. St. Then call your next witness.

Att. Gen. That is Mr. Jackson. Pray you, Sir, tell my Lords what you know of this business: When were you sent for to Mr. Cony?

Jackson. On Wednesday.

Att. Gen. What acquaintance had you with him?

Jackson. I had a very particular acquaintance with him, and I looked upon him as person of a strong, healthy constitution, and not subject to any dangerous distemper;

per; my acquaintance with him was of twelve years standing, and therefore I must needs know him pretty well. Upon the Wednesday, after this accident, hearing he was very weak, I went to visit him, and when I came, he told me, he had been troubled with very unusual swoonding, and then fell into one of them, but with some cordials we revived him again, when we thought all of us he had been dead. The Friday and Saturday before he died, I was with him all day, he complained of great griefs in his belly, he said, he had great torment there, and believed he had received some ill usage lately, which occasioned these pains.

Att. Gen. From whom had he received

Jackson. He was very sparing in telling whom it came from.

Att. Gen. Who did he name?

Jackson. He said he was a drinking with my Lord of Pembroke; but he was in such pains, that I could not ask him many questions which he would answer.

Att. Gen. Where were his pains?

Jackson. In his lower belly, and he had sometimes strange fainting fits.

Att. Gen. When did he first complain of his fits to you?

Jackson. On the Wednesday.

Att. Gen. When did he die?

Jackson. On Monday following.

Att. Gen. Did he complain on Saturday of his belly?

Jackson. Yes.

L. H. St. What discourse had you further with him?

Jackson. None but what I tell your Lordship, that I can remember.

L. H. St. My Lord of Pembroke, have you any thing to say to him?

E. of P. No, my Lord.

L. H. St. Who's next then, Mr. Attorney?

Att. Gen. Alice Avery, my Lord, who

was his nurse—Were you attending upon Mr. Cony in the time of his sickness?

Avery. Yes, I was.

Att. Gen. Pray tell my Lord your whole knowledge.

Avery. When he came in on the Monday morning, I found he was very ill, and could not well stand: Sir, said I to him, sure you are very much in beer; No, said he, I am very sore, and full of pain: Sir, said I, I believe you have been in some bad company? Yes, said he, I have been in some company, where I have received a great deal of wrong, I am not able to go nor stand, I have been beaten and kicked more than ordinary, I was never so abused in all my life; and upon his dying-bed he wished to God, he had never been in my Lord of Pembroke's company, for he did think in his conscience my Lord had been the death of him.

Att. Gen. Speak that again.

Avery. He wished to God he had never been in my Lord of Pembroke's company, for he did think in his conscience that he had been the death of him.

L. H. St. How long before he died was that?

Avery. About two or three hours before he died.

Att. Gen. Did he continue sensible to the time that he died?

Avery. Yes, to the last minute.

Att. Gen. How often did he complain of his pain?

Avery. All along from the time he came out of my Lord of Pembroke's company.

Att. Gen. What time did he come home?

Avery. About seven or eight of the clock on Monday morning.

Att. Gen. Where and what part did he complain of then?

Avery. His sides and all parts about him.

Att. Gen. How often did you discourse with him about his pain?

F f f f

Avery.

Avery. Every day divers times, from the time he came home till he died.

Att. Gen. And he spoke those words a little before he died?

Avery. Yes, and often complained of his being abused.

L. H. St. My Lord of Pembroke, will you ask this woman any questions?

E. of P. No, my Lord.

L. H. St. Have you any more witnesses, Mr. Attorney?

Att. Gen. No, my Lord, we shall call three more that had a view of the body after his death, upon the coroner's inquest, who will give your Grace an account what appearance of murder was there visible; and they are Richard Wheeler, William Brown, Thomas Roberts.

Cl. of Cr. Lay you hands on the book: The evidence, &c.

Att. Gen. Which is Mr. Brown? Did you see the body of Mr. Cony after he was dead?

Brown. Yes, my Lord, I was one of the coroner's inquest, which after view of the body went into another house; but some of us seeing the body swelled at that rate as it was, and being unsatisfied of the cause, went back again to look upon it, and there I saw upon his right breast a great black bruise; and I looked upon the cawl, which was all wasted away; and on his left side again a great black spot, and in the bottom of his belly a quantity of very ill-looking blood.

Att. Gen. When was this you saw it? what day? How long after his death?

Brown. The day after he died.

Att. Gen. Where did you observe any hurt and bruise upon him besides?

Brown. As he lay before he was opened, we saw him all over swelled at a prodigious rate, and black and blue in divers places; so that I was unsatisfied till I had seen the inward parts, and therefore went up and saw what I said before.

L. H. St. Did you know the gentleman before?

Brown. No, my Lord.

L. H. St. My Lord of Pembroke, do you desire to ask him any thing?

E. of P. No, my Lord.

L. H. St. Then go on, Sir.

Att. Gen. Richard Wheeler, pray tell my Lord what you know.

Wheeler. My Lord, I was summoned upon the jury by the Coroner, and according to my duty I made such an inspection as I could into the body; I did observe upon his right breast a very black and great bruise, and on the left side of his belly a very black and great bruise, which was indeed of another guise colour than that of settled blood, for I have of my own knowledge had a sad experience of that kind.

Att. Gen. Did you know the gentleman before?

Wheeler. Yes, I knew the gentleman very well, and I had not known him to be the same person then, but by their description that were about him, for all the parts of his body were most violently swelled.

Att. Gen. Did you see the settled blood at the bottom of his belly?

Wheeler. Yes; and as I was informed, that was occasioned by his being forced to lie on his back continually, because his pain would not suffer him to move: that on the side, and ribs, was a perfect bruise.

Att. Gen. Where is Mr. Roberts? Did you see this gentleman's body after his death?

Roberts. I saw the body after it was opened, and viewed the inward lower parts of the belly, where there was a quantity of blood gathered together.

Att. Gen. Was it more black in that part than in others?

Roberts. It was black congealed blood.

Att. Gen. How broad were the spots?

Roberts. About the breadth of my hand.

L. H. St.

L. H. St. Mr. Roberts, did you see the left side of the belly bruised?

Roberts. Yes, my Lord; and (as I said) in the lower inward parts black congealed blood.

L. H. St. Was there any swelling?

Roberts. Yes, my Lord, very much.

L. H. St. The doctor that was examined before, said there was no swelling nor discolouring.

Att. Gen. He did so, my Lord; but this was several days after that.

L. H. St. My Lord of Pembroke, will you examine these men?

E. of P. No, my Lord.

Att. Gen. My Lord, we have but one witness more for the King, and that is Mr. Charles Cony, who is brother of the gentleman that died, who will give you an account what he said in his sickness; and the sayings of a dying man in such circumstances, are remarkable.

Cl. of Cr. Charles Cony, hearken to your oath: The evidence, &c.

Att. Gen. Now Mr. Cony, tell his Grace and my Lords the occasion of your brother's sickness and death.

Cony. May it please your Grace, on Monday the 4th of February, I was sent for by my brother, about nine of the clock in the morning, to come to speak with him, but not believing his business to be urgent, deferred my going; the messenger immediately comes back again, and tells me my brother was exceeding ill: As soon as I came, I found him almost dying, his eyes set, and he extremely ill, but we recovered him in a little time: whilst he complained of great pain, I examined what might be the cause, and where he had been last night (for I understood he came not home till morning) and in what company. And when I was told of my Lord of Pembroke's company, who had struck him down with a box of the ear, both he and I quickly concluded how his ill came: But

to be satisfied, (he telling me he could not remember what he did) we sent for the drawer, to know the truth of the matter: but in the mean time, to comfort him, I told him I hoped it was only a fainting fit, which would be over again in a while. The drawer came, and did assure me that my Lord did never strike him; which upon assurance I did believe, especially when he came again in the afternoon, and told me the same story. All the while he was in the horridest pain that could be, and could not be touched, but was forced to lie upon his back. The doctor told us, for application to ease his pain, the best thing to wrap him in was a whole weather's skin; which we did at two of the clock in the afternoon, by the help of a chirurgeon, raise him up, and put on him. On Tuesday morning I sent to know how he did, being necessitated to go another way; he sent word back, he was pretty well at ease, and had rested pretty well. On Wednesday he rose, and sat up; on Thursday he was so well, that he would have some friends to dine with him in his chamber; on Friday he was a little ill again, but on Saturday he was so well, that he would have gone abroad, and truly we did never (I'm sure I did not) believe he would have died, till about two hours before he died. One day when Dr. Conquest came out of his chamber, he seemed to be in a huff, and said, he was only kept there to do the drudgery; and when I asked him, what he thought of my brother? he answered me short, "I cannot tell whether it be a Pembroke-kick or no." And when I, upon the report of my Lord's having abused him, (which yet upon the drawer's answer I believed not) spoke to him about it, he would seem displeased any should mention it: He once indeed told me he had something else to reveal to the doctor, but what it was I cannot tell.

Att. Gen.

Att. Gen. Did you apprehend him to be so ill as he was?

Cony. No, I never believed it, till an hour before he died: and this is all that I can say, my Lord.

L. H. St. Will you, my Lord of Pembroke, ask Mr. Cony any question?

E. of P. I desire your Grace to ask him what chirurgeons they were that did view the body after dead.

L. H. St. Mr. Cony, come forward, my Lord of Pembroke desires to know what chirurgeons viewed the body?

Cony. Mr. Snell, the chirurgeon, I think, my Lord.

E. of P. I desire your Grace he may be examined.

L. H. St. If the King's counsel have done, then your Lordship may examine whom you please: what would your Lordship examine into?

E. of P. To give your Grace an account what might be the cause of the blood found in Mr. Cony's body.

Att. Gen. Because we did omit to examine Jackson to that matter, we desire for the King, we may call him to that point now.

L. H. St. You should have examined all your witnesses fully at first.

Att. Gen. We acknowledge it, my Lord; but since we did forget it, we humbly crave leave to do it now.

L. H. St. Here is Mr. Jackson, what do you ask him?

Att. Gen. Mr. Jackson, were you present at the opening of Mr. Cony's body?

Jackson. Yes, Sir.

Att. Gen. What did you see there?

Jackson. There was an extraordinary quantity of extravasated blood in the lower part of his belly.

L. H. St. Extravasated blood?

Jackson. Yes, my Lord.

Att. Gen. How might that come? might it not proceed from a natural cause?

Jackson. I believe it came from some bruises given him, and from some violences that were done to him.

Att. Gen. In the belly was it?

Jackson. Yes, in the belly.

Att. Gen. You saw then: Did you see any swelling there?

Jackson. Yes, and the diaphragma bruised, &c.

Att. Gen. Now, my Lord, we have done with our evidence for the King.

L. H. St. My Lord of Pembroke, if your Lordship have any witness to call, or will say any thing for yourself, now is the time.

E. of P. I desire your Grace that Dr. Lower, and Dr. Conquest, and one Mr. Raven, may be examined for me.

L. H. St. Call Dr. Lower, Dr. Conquest, and Mr. Raven.

Cl. of Cr. Here they are, make room for them.

L. H. St. My Lord of Pembroke, who will your Lordship begin with?

E. of P. Dr. Conquest, my Lord.

L. H. St. Doctor, you are not upon your oath, but you must have a strict care what you say, for there will be a good account to be taken of it at another place, and it being a testimony before a court of judicature, the obligation upon you to speak the truth is as great, as if you did swear.

Dr. Conquest. The account I now give, my Lord, is that account which I gave upon my oath before the Coroner.

L. H. St. You must give it again *viva voce*; we must not read your examination before the court.

Conquest. The first occasion I had to see Mr. Cony as a physician, was about three months before this unhappy accident; he was then in a fainting fit at the Rose-tavern, &c. when I was sent for to him; he had for half an hour lain quite dead, as they thought, but with their rubbing him, and giving him some mull'd sack, he was come

to himself just as I came, but he had no pulse, and was relapsing into his fit: I gave him some drops and cordials, and sent him home pretty well again. We went from thence, and the next morning his man came to call me, and told me his master was dying, which was (as I take it, the 6th of September last: When I came thither, I found his man sitting by the fire, and asking for his master, he told me he was asleep; I was something vexed at the fellow for troubling of me so, and while I was speaking to him, Mr. Cony at last heard my voice, and calling me to him, desired I would come again in the afternoon, for he had a mind to rest this morning; I came at one of the clock again, where I found him very ill, and very melancholy; he wept, and sent his man down stairs, and when the man was gone, I asked him what was the occasion? He told me, he found so great an oppression at his heart, that he could hardly speak; I desired he would take some advice, and send for another physician; but he would have none else, but would needs go abroad that afternoon: I desired him all I could; but not prevailing with him, I gave him some cordial drops, and desired him to return home betimes; but he did not, but, as I heard, drank very hard, and returned not till very late. In short, in the space of two months, I have been called out of my bed above twenty times, to give him advice, and to recover him out of his fits; but he would take no advice, do whatever I could. After this was his meeting with my Lord of Pembroke, which he thus gave me relation of: He told me he had been with Mr. Goring in the city that day drinking hard, and when he came to Long's, he was so extremely drunk, that he cannot remember any thing that was done there, but finding himself much in pain the next day; he was so ignorant of the transactions there, that he only thought he had had several falls off

the chairs near the fire; he said indeed, he afterwards sent to enquire what had passed in his company that night, and he heard my Lord of Pembroke should give him a box on the ear, but he remembered it not. Two or three days after he sent for me, and told me, now he would take advice of me, and enter into a course of physick; but knowing his condition to be so bad, I would not venture upon it alone, and desired that he would join some one else with me in consultation: He asked me what physician he should send for? I desired him to name any one whom he had a mind to; he said he knew none, and therefore would have me take whom I would, I then named Dr. Lower, and obtained his consent to have his advice, whom I brought with me to his lodgings. And the Saturday before he died, as we were coming in the coach; I told Dr. Lower what I had known of his distemper before, and what might be the occasion of it, which (when we came thither) I repeated again in Mr. Cony's presence, who did confess the whole to be as I said, that he had been a very hard drinker of wine, and strong waters upon it, which had (he believed) caused a stagnation of blood in his body, which might be the occasion of his fainting fits. We consulted the whole cause; he owned no blow or kick he had received, neither did I believe his intrails had received any such prejudice, because I saw him myself take two or three glisters, as particularly that evening; yet he would not be regular, but that night drank three whole tankards of cold small beer, which did put him into a very violent fit of the gripes. He sent for me, and having left him pretty well, I wondered what alteration could cause so violent a distemper in him so suddenly: He fell a vomiting, and vomited all night; and when I came and found him in a dying fit, I gave him some drops I had about me, and fetched him to life again; but still he was very

bad.

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bad, and he had a glister for the gripes ; he would fain have had some small beer, which I dissuaded him from, and advised him rather to white-wine posset drink, but he swore a great oath, he would have small beer ; Dr. Lower, I suppose, saw him that morning. An hour before he died, I came again, and thought fit to bleed, and so he was ; he bled about eight ounces, and was a little better, so I left him ; an hour after I came again, and found he was dead ; but for his complaining of any bruise or hurt that way received, I remember not.

L. H. St. Did you see him after he was dead, and when he was opened ?

Conquest. Yes, my Lord, I did see him opened.

L. H. St. What was your judgment then ?

Conquest. My Lord there was clotted blood among the bowels, that was extravasated. My Lord, the breaking out of which, I did attribute to the great quantity of small beer he had drank, and the griping that followed upon it ; but the bowels were none of them touched, and he himself attributed his fits to that.

L. H. St. Mr. Attorney, will you ask him any cross question ?

Att. Gen. No, my Lord.

L. H. St. Then Dr. Lower, pray speak your knowledge,

Lower. All the account, my Lord, that I can give is, That the day before Mr. Cony died, Dr. Conquest did come to me to desire me to go with him, and by the way (as he related) told me the manner of his fits, and what he thought was the occasion of them ; and in that discourse we continued till we came to his lodgings, where we found him in his bed ; and when he was up, Dr. Conquest repeated what he had told me before, and he acknowledged all that to be true : I my self asked him many questions how he found himself ; he said, those fits came upon him suddenly by sick-

ness upon his stomach ; but there was no any discourse in my hearing of any bruise or hurt that way, nor had I any reason to suspect any such thing should be the cause of his illness, for he had no symptom of a fever upon him, either in tongue, pulse, or urine, which would have been, had he owed his distemper to any thing of that kind. The next day I was sent for to him early, but my necessary attendance on other patients would not let me come quickly to him : When I came, I found him dying, and seeing no hopes of his recovery, left him ; I was desired to be present at the dissection, but because of the rumour of this business, I said it would be a troublesome matter, and therefore would purposely avoid it.

L. H. St. So you did not see him dissected ?

Lower. No, my Lord, I did fear being troubled, and would have avoided it, but could not, it seems, for I am come here to testify this.

L. H. St. Did he use any words to you whilst he was sick, complaining of any abuse or wrong offered him by beating or kicking ?

Lower. No, my Lord.

L. H. St. How long was it before he died that you saw him ?

Lower. It was on Saturday at four of the clock in the afternoon, and he died on Sunday at noon.

L. H. St. And when you came to see him again, you found him dying ?

Lower. Yes, my Lord.

L. H. St. But you say, all the time you were with him, you saw no symptom of a fever on him ?

Lower. No. none at all, my Lord.

L. H. St. I then ask you this question, Doctor, Can any man be mortally hurt and bruised, whereof he may languish, and not have a fever ?

Lower.

Lower. According to my knowledge and experience, my Lord, usually and most commonly upon a mortal bruise, an inflammation follows, and that inflammation causes a fever, which will be evident in the patient's pulse, or tongue, or water; but none of these I found so affected with Mr. Cony.

L. H. St. Have you any thing to say to this gentleman, Mr. Attorney;

Att. Gen.. No, my Lord.

L. H. St. Where then are the rest of your witnesses? My Lord of Pembroke, will you call any more evidence?

E. of P. Yes, my Lord, Mr. Raven.

L. H. St. Dr. Conquest, pray before you go; you say you told Dr. Lower of Mr. Cony's fits before, were they the same with those he had in his last sickness?

Conquest. Yes, my Lord, the same fainting fits.

L. H. St. And you imputed them to the same cause?

Conquest. Yes, my Lord, to his hard drinking wine and strong waters, and then great quantities of small beer; I told his landlady often it would kill him, but I could never get him to be regular, nor take any advice.

L. H. St. Hath your Lordship any more witnesses?

E. of P. Mr. Raven, my Lord.

L. H. St. Come forward, Mr. Raven, and speak out.

Raven. I viewed the body (my Lord) before and when it was opened, and it was reported to me that there was a bruise in each side of the belly, of which thereupon I took a stricter view, and could find no blackness, nor blueness, nor marks of bruises; upon which the body was opened, and there issued thence clotted blood; then I looked upon the cawl, which was withered and consumed, and the heart was as loose as a rag, and his lungs stuck to each side of his ribs: and as to the matter of the

blood, that was not an extraordinary thing, for it is known to physicians, that in all natural deaths there must be extravasated blood in the lower belly.

L. H. St. How did you think there came to be that quantity of blood there?

Raven. This blood I think (my Lord) must be extravasated by the violence of his gripes, for it is proved he drank a great quantity of claret, and afterwards of small beer, which set the blood upon a fermentation; that set him a vomiting, by the violence thereby used to nature, this blood was thrown down into the belly; but in all natural deaths, if there be not so great a consumption of the blood that there is none left, there must be some extravasated; it is a clear case.

L. H. St. My Lord of Pembroke, hath your Lordship any more witnesses?

E. of P. Yes, my Lord, two more, Benjamin Long, and William Viner.

L. H. St. Who does your Lordship begin with?

E. of P. Long.

L. H. St. Do you hear, Long, you must have as great a care what you say, as if you were upon your oath.

Long. A little before this business happened, Mr. Cony comes into my house at Covent-garden, and said he was very ill; he was just going to sit down, and mis'd the chair, and had like to have fallen down, being almost in a swoon; whereupon he said, send for Dr. Conquest presently, or else I shall die: So I sent my servant to call him, who found him at the coffee-house: When he came in, said he, Sir, how do you? I am glad you are come, said Mr. Cony, for I am very ill; and there were two gentlemen came in with the Doctor, that were then going to the play-house; said Mr. Cony, I am taken with the fainting fits, and fear they will kill me. Upon that Dr. Conquest bid him have a care of drinking, for it would ruin him.

L. H. St.

L. H. St. When was this ?

Long. A little before Christmase, my Lord.

L. H. St. How long before he died ?

Long. It was before he was hurt.

L. H. St. How long ?

Long. Five or six weeks, my Lord, as I remember, I cannot tell exactly.

L. H. St. Well, and what followed ?

Long. Dr. Conquest would have him go home to bed, which I know not whether he did or no, but he went away from our house, and the Doctor said he would send him a glister, and some other things the next morning. And this is all I can say.

L. H. St. Is that all you can say ?

Long. Yes, my Lord.

L. H. St. Why, was not this accident done at your house ?

Long. No, my Lord, it was done at my brother's in the Hay-market.

L. H. St. Then call next Viner ; what say you ?

Viner. May it please your Grace, I am drawer at Mr. Long's in the Hay-market, I did see my Lord strike him with his hand, and that is all ; I came in just as he struck the blow, and Captain Savage bid me keep out Mr. Goring, which while I was doing, I knew not what was done more ; but after they had laid him upon the chairs, they charged me to make a fire, and look after him, and left him ; he fell down divers times off the chairs ; and when he came to himself a little, I asked him how he did ? he told me he was very sick, and I got him still up again upon the chairs ; and then he had several fainting fits in the room, and about seven of the clock in the morning, we sent him home in a chair to his lodging. The same day at one of the clock he sent for me, to know what had happened, for his own memory would not serve him to tell ; I did not think fit then to tell him my Lord had struck him, but told him he had had many falls in the room : 'Tis fits,

said he, that I have had not long since and it comes with my hard drinking, and not looking to myself.

L. H. St. He supposed it to be so.

Viner. Yes, my Lord, he himself did.

L. H. St. Did you see my Lord of Pembroke tread upon him ?

Viner. No, my Lord, I only saw the blow of his hand, for I was getting Mr. Goring out of the room.

L. H. St. Did he say my Lord of Pembroke did tread upon him ?

Viner. No, he could not tell any thing that my Lord had done to him ; he was drunk that night, and therefore sent for me to know how it was.

L. H. St. My Lord of Pembroke, hath your Lordship any more witnesses ?

E. of P. No, my Lord.

L. H. St. Did not your Lordship speak of one Snell, my Lord, a chirurgeon, at first ?

E. of P. I did expect, my Lord, they should have brought the person your Grace speaks of.

L. H. St. Why, my Lord ?

E. of P. Because he was their chirurgeon.

L. H. St. What say you now of the King's counsel, to my Lord's defence ?

Sol. Gen. If my Lord hath done, we are ready to go on for the King.

L. H. St. Will your Lordship say any thing more for yourself ?

E. of P. I have nothing more to say, my Lord.

" Then Sir Francis Winnington, his Majesty's Solicitor General, summ'd up the evidence, and concluded the charge thus :

Sir Francis Winnington, Sol. Gen. May it please your Grace my Lord High Steward of England, and my noble Lords, that are now judges of this cause of blood ;
I shall

I shall with all faithfulness endeavour to discharge my duty in this Great Court, and confine myself solely to the evidence that hath been given, and I hope I shall not do this noble Lord, the prisoner at the bar, any injury, by misrepresentation. This evidence, my Lords, that hath been produced for the King, to make it out, that the prisoner at the bar is guilty of murder, doth (may it please your Grace) consist of three parts.

1. In the first are contained those matters of fact, which did arise at the time when the poor unfortunate gentleman came into my Lord Pembroke's company, and what happened before my Lord of Pembroke did depart from that place.

2. The second part of the evidence consists of matters that did arise by confession of the party, and his discoursing with persons who came to visit him, or were with him during the time of his sickness.

3. The third part doth consist of matters arising after his death, upon the view of the body. Under these three heads are comprehended all the King's evidence, and with humble submission I humbly conceive, that the evidence doth reach the indictment, which is for the crime of wilful murder. But when I have humbly stated the fact, I must submit it to the judgment of my noble Lords and Peers.

But to take a due method, I shall begin with a word or two of what Mr. Attorney General was pleased to hint, when he opened the cause, that is, to shew what murder is, and wherein we conceive the evidence comes up to the indictment. Murder in our law is, when one man kills another upon malice fore-thought; now that malice is comprehended under two particulars: The one is express a former grudge, discontent, and hatred to a man, to lye in wait to slay him: The other is malice implied, and that is when a person will come and fall upon another, and kill him with violence, without any provocation; and that I take

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to be the case now before your Grace, and these noble Lords; whether this noble Lord, the prisoner at the bar, be guilty of murder, under the head of malice implied, having killed a man, without any provocation given; for if it should be made appear, as I humbly conceive it hath, with submission, that Mr. Cony did receive his wound, whereby his death came, from the Earl of Pembroke, it is with our law murder.

That my Lord of Pembroke did invite him into his company, is sworn by four witnesses; for when they came into the house, they did not so much as enquire whether my Lord was there or no; and when my Lord asked him to come into the room, Mr. Cony did excuse it, in a manner, by having his friend with him; pray bring your friend in with you, said my Lord: After a little while it was said, there were several discourses pass'd between my Lord and Mr. Goring concerning play, and their families; but the third witness doth swear, that when they were speaking of playing for 500l. Mr. Goring declined; my Lord of Pembroke first called him idle fellow, and that occasioned Mr. Goring to give that language, which was not so fit for him to give to a noble Lord of his quality. But, may it please your Grace, let the discourse between Mr. Goring and my Lord of Pembroke be what it will, the question will be, Whether or no the party that was killed, gave my Lord of Pembroke any provocation, or cause of discontent, which might make him give him that blow? or whether or no the striking or kicking was the cause of his death? that comes in the last place, for I am now under that head; there was no provocation given by Mr. Cony to my Lord to strike him, and four witnesses there were to that, the persons by at the time when it was given, who all as to the substance swear the same thing, only one or two circumstances come from some of them,

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that

that do not come from all. Mr. Savage, a man of quality, and an honourable family, swears, That at the time when Mr. Goring was put out of the room, he saw the Earl of Pembroke (turning his face) give Cony a blow on the head, and one kick when he was down : the question was asked him, Whither he kicked him upon the belly ? but that he could not answer to : He likewise doth particularly say, after the blow was given by the Earl of Pembroke, that struck him down to the ground, he saw his knee lifted up to kick him, higher than the motion of usual walking, so that some violence was used as to that. Mr. Fitzpatrick, though they all agree in substance, yet he hath one particular differing from the rest; he saith, That when my Lord of Pembroke was asked why he struck Mr. Cony, he answered, because he said Mr. Goring should not go out of the room, without his knowing some reason for it; this he swears the Earl did say, but whether it was so or no is the question. Shelley says, No such word passed, nor doth Savage speak of it; but be that circumstance true or not, (for all the witnesses agree in substance, and may not be able to agree in all circumstances) yet under submission, I must leave it to the judgment of my Lords the Peers, whether that be provocation sufficient to lay violent hands on a man. Shelley indeed says the words were, I know not why my friend is turn'd out of doors; nor whether these are a provocation, such as in judgment of law can be deemed sufficient to lay violent hands on a man to kill him, is the question; we suppose it is not, but such a stroke is given without a provocation, in which the law implies malice. This (may it please your Grace) is the sum of that, which I humbly take the boldness to remember your Lordship of, as to the first part of the evidence.

adly, the second part is upon what ariseth after the blow was given. My Lord of Pembroke at that time was certainly ap-

prehensive he had done the gentleman some wrong, and that is evident by his care of him after, for his own witness Viner doth say, that my Lord bid him make a fire and watch with him; surely if my Lord had not been conscious to himself, that he had done something extraordinary to the person of that gentleman, that caution had not been given to the man: But besides (my Lord) there are little circumstances, which are always allowed for evidence in such cases, where men receive any wounds to ask them questions while they are ill about it; who hurt them. Now as to this there are four witnesses also, Dr. Bruce, Mr. Hemes, Mr. Jackson, and Alice Avery.

Dr. Bruce swears, that when he came on the Monday to enquire of Mr. Cony what his illness was, he did complain of soreness about his shoulders, but did not make mention of the lower part of his belly, or any discolouring there.

But Hemes the apothecary says, he not only complained of extream pains in his shoulders, but also of extream inward soreness in the lower part of his belly, and this person was frequently with him, and the same complaints came from him, till he expired his last breath.

Jackson, he did know him for a long time before; he said indeed, He had about two or three months before a fainting fit or two, but to this time he looked upon him as a healthy man, and he continued with him off and on till he died, and to him he did declare he had received injury from the Earl of Pembroke, though he was very loth to say what: And he also tells your Lordships, that he saw the blood in his belly after the dissection, which he imputed to some hurt he had received. Indeed there is a chirurgeon that tells your Lordships that it is an ordinary thing, and that it is so in all natural deaths, and it might be occasioned by his drinking the beer, which made him vomit, and concluded with these

words,

words, (I noted them.) 'Tis a clear case; but the man not being upon his oath, and giving it in as his single opinion, I hope will not bear so much with your Lordships.

The nurse that was continually with him to the last moment, swears, he did continually complain after he came into the house, of pains all over his body, and (as she saith) continued in his senses, and the right use of his understanding, till his last breath, but principally complained of soreness in his shoulder, his side, and his belly, and did likewise often mention my Lord of Pembroke's unkindness to him, declaring about two hours before he died, that he thought in his conscience the Earl of Pembroke was the cause of his death.

These four witnesses swear what I have truly repeated, for I would be very unwilling in a cause of blood, to misrepeat the evidence, either to the prejudice of a just cause for the dead, or to press for unjust vengeance upon the living, it being my duty only to recollect what is sworn, and leave it all to your Lordships judgment.

3dly. We have that which is evidence in law, upon the view of the body after his death. It was viewed legally by a Jury of indifferent persons, summoned by the Coroner; three of them being produced do swear, that there were a great many visible bruises upon the body, and swellings all about: And for the discolouring of the parts bruised, Roberts swears, the patch was about the breadth of his hand: Brown likewise swears, that he was black and blue up and down the body in broad patches: These are jury-men, disinterested persons. It is true, Mr. Cony's brother, the last witness for the King saith, he knew nothing of the business, for his brother would never acknowledge any thing to him but something that he speaks is very material, That Dr. Conquest, my Lord's witness, coming out of the chamber one day, seemed an-

gry, and to have taken some distaste, as if he were neglected, and used an expression, which your Lordship may remember, upon Mr. Cony's asking him what ailed his brother, he could not tell he said, it might be "A Pembroke-kick." And this is the sum of the evidence for the King.

For the evidence on the other side, I think the substance of it is only, that this gentleman was used to have fainting fits, and those occasioned, as they think, by his hard drinking, and that might bring his death upon him; but they offer no counterproof to the fact.

But the question is now, whether or no this man came to his death by other means; for it is no argument to say, because a man is sick, it is lawful to kill him: but we are to enquire, whether he came to his death by those blows given him by the prisoner at the bar? If then it be admitted that the blow was the cause of his death, and the kicks withall, I humbly then submit to your Lordships consideration, whether the King's evidence hath not reach'd up to the indictment: Here is murder with malice implied by the law, for there is no colour of pleading a provocation of the blow, to be the cause of his death. Now whether or no it be so, I humbly offer these reasons for the affirmation; this man was not look'd upon to be a man in that condition as to be a dying man, before the blow.

Obj. But he was a great drinker, that brought him to those fits, and that hastened his end.

Ans. Though he was so, yet from the instant that he did receive the blow, he never had any ease till he died, insomuch that Mr. Savage tells your Lordships, he took him up immediately after my Lord kicked him, and he was some minutes before he could get him to life again, and then he could not keep himself from fainting again: So that upon the circumstances of what the witnesses for the prisoner

prisoner have said, and the evidence offered in behalf of the King, if this were the cause of his death, we leave it to your Lordships consideration, whether it be not murder in this noble Lord the prisoner at the bar: To that determination we submit the cause, and whatever opinion your Lordships shall be of in the cause, I have no more to say, but that the King's Justice in this prosecution, was suitable to the law given by the Almighty in the infancy of the world, "That whosoever sheddeth man's blood, by man shall his blood be shed."

L. H. St. Will your Lordships please to withdraw to consider of the evidence?

Then the Lords went back in the same order they came in, and went into the House of Lords; and from thence, after two hours debate, they returned into the Court, and proclamation was made as followeth.

Cl. of Cr. Serjeant at Arms, make proclamation.

Serj. O yes, my Lord High Steward of England, his Grace straitly chargeth and commandeth all manner of persons here present, to keep silence upon pain of imprisonment.

Then his Grace spake to the Peers.

L. H. St. Your Lordships have heard the evidence against the prisoner, and for him, on both sides, and the solemnity in this case is, that your opinions are to be delivered severally, in the absence of the prisoner, who is to hear all that is by the witness or counsel said against him, but is to have his judgment from the High-Steward.

Upon the whole matter the question is this; Whether my Lord of Pembroke be guilty of the felony whereof he stands indicted, for the murder of Mr. Cony, or not guilty?

The order of your opinions being delivered, is to begin with the Puisne Baron, and so upwards.

I desire time to take your Lordships judgments distinctly, and I desire each of your Lordships to speak out, that I may hear it.

L. H. St. My Lord Butler, what is your opinion? Is Philip, Earl of Pembroke and Montgomery, guilty of the felony and murder whereof he stands indicted, or not guilty?

L. Butler. Not guilty of murder, but guilty of manslaughter.

The same question to the rest.

The Lord High-Steward counted their numbers.

L. H. St. Six of my Lords find him guilty: eighteen find him not guilty: forty find him guilty of manslaughter. Call for the prisoner to the bar.

Cl. of Cr. Serjeant at Arms, make proclamation.

Serj. O yes, Constable of the Tower of London, bring forth the body of thy prisoner, Philip, Earl of Pembroke and Montgomery, on pain and peril shall fall thereon.

Then the prisoner came in, with the edge of the ax still from him, and his Grace spake to him as followeth.

L. H. St. My Lord of Pembroke, you have been indicted for the murder of Nathaniel Cony, and upon your arraignment you have pleaded Not Guilty, and have put yourself upon the judgment of your Peers; and your Peers have considered what have been said for you, and against you, and the judgment of my Lords is this, That you are guilty of manslaughter for killing of Nathaniel Cony: What can you say for yourself, why judgment should not pass upon you to die according to the law?

E. of P. I claim the privilege of the statute made in that case, my Lord.

L. H. St. You must have it, my Lord, it cannot be denied you; for by Act of Parliament, where clergy is allowed to a common

common person, by reading, and burning in the hand, "a Peer convicted" of such felony, is to be delivered without either, therefore we cannot deny it you: But your Lordship must give me leave to tell you, that no man can have the benefit of that statute but once, and so I would have your Lordship take notice of it, as a caution to you for the future.

Your Lordship is now to be discharged, paying your fees.

Then the prisoner went from the bar, and his Grace by proclamation thus dissolved his commission.

Cl. of Cr. Serjeant at Arms, make proclamation.

Serj. O yes, O yes, O yes, my Lord High-Steward of England willeth and commandeth all persons here assembled, to depart in God's peace and the King's from this place, for his Grace doth now dissolve his commission.

God save the King.

Then his Grace concluded the ceremony, by breaking his staff.

The Trial of WILLIAM PENN and WILLIAM MEAD, at the Sessions held at the Old-Baily in London, the 1st, 3d, 4th, and 5th of September, 1670.

P R E S E N T.

Samuel Starling, Mayor.
Thomas Howel, Recorder.
Thomas Bludworth, Alderman.
William Peak, Alderman.
John Robinson, Alderman.

Richard Ford, Alderman.
Joseph Shelden, Alderman.
John Smith, }
James Edwards, } Sheriffs.
Richard Browne.

Crier. O yes, Thomas Veer, — Bushel, John Hammond, Charles Milson, Gregory Walklet, John Brightman, William Plumsted, Henry Henley, Thomas Damask, Henry Michel, William Lever, John Baily.

The Form of the OATH.

You shall well and truly try, and true deliverance make betwixt our Sovereign Lord the King, and the prisoners at the bar, according to your evidence. "So help you God."

THAT William Penn, Gent. and William Mead, late of London, Linen-draper, with divers other persons to the Jurors unknown, to the number of three hundred, the 14th day of August, in the

22d year of the King, about eleven of the clock in the forenoon, the same day, with force and arms, &c. in the parish of St. Bennet Gracechurch in Bridge-Ward, London, in the street called Gracechurch-

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I i i i

Street

Street, unlawfully and tumultuously did assemble and congregate themselves together, to the disturbance of the peace of the said Lord the King: And the aforesaid William Penn and William Mead, together with other persons to the Jurors aforesaid unknown, then and there so assembled and congregated together; the aforesaid William Penn, by agreement between him and William Mead before made, and by abetment of the aforesaid William Mead, then and there, in the open street, did take upon himself to preach and speak, and then and there did preach and speak unto the aforesaid William Mead, and other persons there, in the street aforesaid, being assembled and congregated together, by reason whereof a great concourse and tumult of people in the street aforesaid, then and there, a long time did remain and continue, in contempt of the said Lord the King, and of his law, to the great disturbance of his peace; to the great terror and disturbance of many of his liege people and subjects, to the ill example of all others in the like case offenders, and against the peace of the said Lord the King, his crown and dignity.

What say you, William Penn and William Mead, are you Guilty, as you stand indicted, in manner and form, as aforesaid, or Not Guilty?

Penn. It is impossible, that we should be able to remember the indictment *verbatim*, and therefore we desire a copy of it, as is customary in the like occasions.

Recorder. You must first plead to the indictment, before you can have a copy of it.

Penn. I am unacquainted with the formality of the law, and therefore, before I shall answer directly, I request two things of the court. First, that no advantage may be taken against me, nor I deprived of any benefit, which I might otherwise have received. Secondly, that you will promise

me a fair hearing, and liberty of making my defence.

Court. No advantage shall be taken against you; you shall have liberty; you shall be heard.

Penn. Then I plead Not guilty in manner and form.

Clerk. What sayest thou, William Mead, art thou Guilty in manner and form, as thou standest indicted, or Not guilty?

Mead. I shall desire the same liberty as is promised William Penn.

Court. You shall have it.

Mead. Then I plead Not guilty in manner and form.

The court adjourned until the afternoon.

Crier. O yes, &c.

Cler. Bring William Penn and William Mead to the bar.

Observ. The said prisoners were brought, but were set aside, and other business prosecuted. Where we cannot choose but observe, that it was the constant and unkind practices of the court to the prisoners, to make them wait upon the trials of felons and murderers, thereby designing, in all probability, both to affront and tire them.

After five hours attendance, the court broke up and adjourned to the third instant.

The third of September 1670, the court sat.

Crier. O yes, &c.

Cler. Bring William Penn and William Mead to the bar.

Mayor. Sirrah, who bid you put off their hats? Put on their hats again.

Obser. Whereupon one of the officers putting the prisoners hats upon their heads (pursuant to the order of the court) brought them to the bar.

Record. Do you know where you are?

Penn. Yes.

Record. Do not you know it is the King's court?

Penn. I

Penn. I know it to be a court, and I suppose it to be the King's court.

Record. Do you not know there is respect due to the court?

Penn. Yes.

Record. Why do you not pay it then?

Penn. I do so.

Record. Why do you not pull off your hat then?

Penn. Because I do not believe that to be any respect.

Record. Well, the court sets forty marks a piece upon your heads, as a fine for your contempt of the court.

Penn. I desire it might be observed, that we came into the court with our hats off, (that is, taken off) and if they have been put on since, it was by order from the bench; and therefore not we, but the bench should be fined.

Mead. I have a question to ask the Recorder, Am I fined also?

Record. Yes.

Mead. I desire the Jury, and all people to take notice of this injustice of the Recorder; who spake to me to pull off my hat? and yet hath he put a fine upon my head. O fear the Lord, and dread his power, and yield to the guidance of his Holy Spirit, for he is not far from every one of you.

The Jury sworn again.

Obser. J. Robinton, Lieutenant of the Tower, disingenuously objected against — Bushel, as if he had not kissed the book, and therefore would have him sworn again; though indeed it was on purpose to have made use of his tenderness of conscience in avoiding reiterated oaths, to have put him by his being a Jury-man, apprehending him to be a person not fit to answer their arbitrary ends.

The Clerk read the indictment, as aforesaid.

Clerk. Cryer, call James Cook into the court, give him his oath.

Cler. James Cook, lay your hand upon the book.

The evidence you shall give to the court, betwixt our Sovereign the King, and the prisoners at the bar, shall be the truth, and the whole truth, and nothing but the truth. "So help you God."

Cook. I was sent for, from the Exchange, to go and disperse a meeting in Gracechurch-Street, where I saw Mr. Penn speaking to the people, but I could not hear what he said, because of the noise: I endeavoured to make way to take him, but I could not get to him for the croud of people; upon which Capt. Mead came to me, about the kennel of the street, and desired me to let him go on; for when he had done, he would bring Mr. Penn to me.

Court. What number do you think might be there?

Cook. About three or four hundred people.

Court. Call Richard Read, give him his oath.

Read being sworn was asked, What do you know concerning the prisoners at the bar?

Read. My Lord, I went to Gracechurch-street, where I found a great croud of people, and I heard Mr. Penn preach to them; and I saw Capt. Mead speaking to Lieutenant Cook, but what he said, I could not tell.

Mead. What did William Penn say?

Read. There was such a great noise, that I could not tell what he said.

Mead. Jury, observe this evidence, he said he heard him preach, and yet saith he doth not know what he said.

Jury, take notice, he swears now a clean contrary thing to what he swore before the Mayor when we were committed; for now he swears that he saw me in Gracechurch-street, and yet swore before the Mayor, when I was committed, that he did not see me

me there. I appeal to the Mayor himself, if this be not true. But no answer was given.

Court. What number do you think might be there?

Read. About four or five hundred.

Penn. I desire to know of him what day it was?

Read. The 14th day of August.

Penn. Did he speak to me, or let me know he was there; for I am very sure I never saw him.

Clerk. Cryer, call ——— into the court.

Court. Give him his oath.

—— My Lord, I saw a great number of people, and Mr. Penn I suppose was speaking; I see him make a motion with his hands, and heard some noise, but could not understand what he said. But for Capt. Mead, I did not see him there.

Rec. What say you, Mr. Mead, were you there?

Mead. It is a maxim in your own law, *Nemo tenetur accusare seipsum*, which if it be not true Latin, I am sure it is true English, "That no man is bound to accuse himself: And why dost thou offer to ensnare me with such a question? Doth not this shew thy malice? Is this like unto a Judge, that ought to be counsel for the prisoner at the bar?"

Rec. Sir, hold your tongue, I did not go about to ensnare you.

Penn. I desire we may come more close to the point; and that silence be commanded in the Court.

Cry. O yes, All manner of persons keep silence upon pain of imprisonment——Silence in the Court.

Penn. We confess ourselves to be so far from recanting, or declining to vindicate the assembling of ourselves to preach, pray, or worship the eternal, holy, just God, that we declare to all the world, that we do believe it to be our indispensable duty, to meet incessantly upon so good an account;

nor shall all the powers upon earth be able to divert us from reverencing and adoring our God who made us.

Brown. You are not here for worshipping God, but for breaking the law; you do yourselves a great deal of wrong in going on in that discourse.

Penn. I affirm I have broken no law, nor am I guilty of the indictment that is laid to my charge; and to the end the Bench, the Jury, and myself, with these that hear us, may have a more direct understanding of this procedure, I desire you would let me know by what law it is you prosecute me, and upon what law you ground my indictment.

Rec. Upon the common law.

Penn. Where is that common law?

Rec. You must not think that I am able to run up so many years, and over so many adjudged cases, which we call common law, to answer your curiosity.

Penn. This answer I am sure is very short of my question, for if it be common, it should not be so hard to produce.

Rec. Sir, will you plead to your indictment?

Penn. Shall I plead to an indictment that hath no foundation in law? If it contain that law you say I have broken, why should you decline to produce that law, since it will be impossible for the Jury to determine, or agree to bring in their verdict, who have not the law produced, by which they should measure the truth of this indictment, and the guilt, or contrary of my fact?

Rec. You are a sawcy fellow, speak to the indictment.

Penn. I say, it is my place to speak to matter of law; I am arraigned a prisoner; my liberty, which is next to life itself, is now concerned: You are many mouths and ears against me, and if I must not be allowed to make the best of my case, it is hard. I say again, unless you shew me, and

and the people, the law you ground your indictment upon, I shall take it for granted your proceedings are meerly arbitrary.

Rec. The question is, whether you are guilty of this indictment?

Pen. The question is not whether I am guilty of this indictment, but whether this indictment be legal. It is too general and imperfect an answer, to say it is the common law, unless we knew both where, and what it is. For where there is no law, there is no transgression; and that law which is not in being, is so far from being common, that it is no law at all.

Rec. You are an impertinent fellow, will you teach the Court what law is? It's *lex non scripta*, that which many have studied thirty or forty years to know, and would you have me to tell you in a moment?

Pen. Certainly, if the common law be so hard to be understood, it is far from being very common; but if the Lord Cook, in his Institutes, be of any consideration, he tells us, that common law is common right, and that common right is the great charter-privileges: Confirmed 9 Hen. III. 29. 25 Edw. I. 1. 2 Edw. III. 8. Cook Instit. 2. p. 56.

Rec. Sir, you are a troublesome fellow, and it is not for the honour of the Court to suffer you to go on.

Pen. I have asked but one question, and you have not answered me; tho' the rights and privileges of every Englishman be concerned in it.

Rec. If I should suffer you to ask questions till to morrow morning, you would be never the wiser.

Pen. That is according as the answers are.

Rec. Sir, we must not stand to hear you talk all night.

Pen. I design no affront to the Court, but to be heard in my just plea: And I must plainly tell you, that if you will deny me Oyer of that law, which you suggest I

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have broken, you do at once deny me an acknowledged right, and evidence to the whole world your resolution to sacrifice the privileges of Englishmen to your sinister and arbitrary designs.

Rec. Take him away. My Lord, if you take not some course with this pestilent fellow, to stop his mouth, we shall not be able to do any thing to night.

Mayor. Take him away, take him away, turn him into the bale-dock.

Pen. These are but so many vain exclamations: Is this justice or true judgment? Must I therefore be taken away because I plead for the fundamental laws of England? However, this I leave upon your consciences, who are of the jury (and my sole judges) that if these ancient fundamental laws, which relate to liberty and property, and (are not limited to particular persuasions in matters of religion) must not be indispensibly maintained and observed, who can say he hath right to the coat upon his back? Certainly our liberties are openly to be invaded, our wives to be ravished, our children slaved, our families ruined, and our estates led away in triumph, by every sturdy beggar and malicious informer, as their trophies, but our (pretended) forfeits for conscience sake. The Lord of Heaven and Earth will be Judge between us in this matter.

Rec. Be silent there.

Pen. I am not to be silent in a case wherein I am so much concerned, and not only myself, but many ten thousand families besides.

Obser. They having rudely haled him into the bale-dock, William Mead they left in Court, who spake as followeth.

Mead. You men of the Jury, here I do now stand, to answer to an indictment against me, which is a bundle of stuff, full of lies and falsehoods; for therein I am accused, that I met *Vi & armis, illicite et tumultuose*: Time was, when I had freedom

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dom to use a carnal weapon, and then I thought I feared no man; but now I fear the Living God, and dare not make use thereof, nor hurt any man; nor do I know I demeaned myself as a tumultuous person: I say, I am a peaceable man, therefore it is a very proper question what William Penn demanded in this case, an Oyer of the law, on which our indictment is grounded.

Rec. I have made answer to that already.

Mead. Turning his face to the Jury, saith, You men of the Jury, who are my Judges, if the Recorder will not tell you what makes a riot, a rout, or an unlawful assembly, Cook, he that once they called the Lord Cook, tells us what makes a riot, a rout, and an unlawful assembly.—A riot is when three, or more, are met together to beat a man, or to enter forcibly into another's man's land, to cut down his grafts, his wood, or break down his pales.

Obfer. Here the Recorder interrupted him, and said, I thank you Sir, that you will tell me what the law is, scornfully pulling off his hat.

Mead. Thou mayst put on thy hat, I have never a fee for thee now.

Brown. He talks at random, one while an independent, another while some other religion, and now a Quaker, and next a Papist.

Mead. *Turpe est doctori cum culpa redarguit ad ipsum.*

May. You deserve to have your tongue cut out.

Rec. If you discourse on this manner, I shall take occasion against you.

Mead. Thou didst promise me, I should have fair liberty to be heard: Why may I not have the privilege of an Englishman? I am an Englishman, and you might be ashamed of this dealing.

Rec. I look upon you to be an enemy to the laws of England, which ought to be observed and kept, nor are you worthy of such privileges, as others have.

Mead. The Lord is Judge between me and thee in this matter.

Obfer. Upon which they took him away into the Bale-dock, and the Recorder proceeded to give the Jury their charge, as followeth.

Rec. You have heard what the indictment is, It is for preaching to the people, and drawing a tumultuous company after them, and Mr. Penn was speaking; if they should not be disturbed, you see they will go on; there are three or four witnesses that have proved this, that he did preach there; that Mr. Mead did allow of it; after this, you have heard by substantial witnesses what is said against them: Now we are upon the matter of fact, which you are to keep to, and observe, as what hath been fully sworn, at your peril.

Obfer. The prisoners were put out of the court into the bale-dock, and the charge given to the Jury in their absence, at which W. P. with a very raised voice, it being a considerable distance from the Bench, spake.

Pen. I appeal to the Jury, who are my Judges, and this great Assembly, whether the proceedings of the Court are not most arbitrary, and void of all law, in offering to give the Jury their charge in the absence of the prisoners; I say, it is directly opposite to, and destructive of, the undoubted right of every English prisoner, as Cook in the 2 Instit. 29. on the chap. of Magna Charta speaks.

Obfer. The Recorder being thus unexpectedly lashed for his extra-judicial procedure, said, with an enraged smile.

Rec. Why, ye are present, you do hear, do you not?

Pen. No thanks to the court, that commanded me into the bale-dock; and you of the jury take notice, that I have not been heard, neither can you legally depart the court, before I have been fully heard, having at least ten or twelve material points to offer.

offer, in order to invalid their indictment.

Rec. Pull that fellow down, pull him down.

Mead. Are these according to the rights and privileges of Englishmen, that we should not be heard, but turned into the bale-dock, for making our defence, and the jury to have their charge given them in our absence? I say these are barbarous and unjust proceedings.

Rec. Take them away into the hole: To hear them talk all night, as they would, that I think doth not become the honour of the court, and I think you (i. e. the jury) yourselves would be tired out, and not have patience to hear them.

Obser. The jury were commanded up to agree upon their verdict, the prisoners remaining in the stinking hole. After an hour and half's time eight came down agreed, but four remained above; the court sent an officer for them, and they accordingly came down. The bench used many unworthy threats to the four that dissented; and the Recorder, addressing himself to Bushell, said, "Sir, you are the cause of this disturbance, and manifestly shew yourself an abettor of faction; I shall set a mark upon you, Sir."

J. Robinson. Mr. Bushel, I have known you near this fourteen years; you have thrust yourself upon this jury, because you think there is some service for you; I tell you, you deserve to be indicted more than any man that hath been brought to the bar this day.

Bushel. No, Sir John, there were three-score before me, and I would willingly have got off, but could not.

Bloodw. I said, when I saw Mr. Bushel, what I see is come to pass, for I knew he would never yield. Mr. Bushel, we know what you are.

May. Sirrah, you are an impudent fellow, I will put a mark upon you.

Obser. They used much menacing lan-

guage, and behaved themselves very imperiously to the jury, as persons not more void of justice than sober education; after this barbarous usage, they sent them to consider of bringing in their verdict, and after some considerable time they returned to the court. Silence was called for, and the jury called by their names.

Cler. Are you agreed upon your verdict?

Jury. Yes.

Cler. Who shall speak for you?

Jury. Our fore-man.

Cler. Look upon the prisoner at the bar; How say you? Is William Penn guilty of the matter whereof he stands indicted in manner and form, or Not guilty?

Fore-m. Guilty of speaking in Gracechurch-street.

Court. Is that all?

Fore-m. That is all I have in commission.

Rec. You had as good say nothing.

May. Was it not an unlawful assembly? you mean he was speaking to a tumult of people there?

Fore-m. My Lord, this is all I had in commission.

Obser. Here some of the jury seemed to buckle to the questions of the court; upon which, Bushel, Hammond, and some others, opposed themselves, and said, they allowed of no such word, as an unlawful assembly in their verdict; at which the Recorder, Mayor, Robinson and Bloodworth took great occasion to villify them with most opprobrious language; and this verdict notwithstanding their turns, the recorder expressed himself thus:

Rec. The law of England will not allow you to part till you have given in your verdict.

Jury. We have given in our verdict, and we can give in no other,

Rec. Gentlemen, you have not given in your verdict, and you had as good say nothing; therefore go and consider it once more.

more, that we may make an end of this troublesome business.

Jury. We desire we may have pen, ink, and paper.

Obser. The court adjourn'd for half an hour; which being expired, the court returns, and the jury not long after.

The prisoners were brought to the bar, and the jury's names called over.

Cler. Are you agreed of your verdict?

Jur. Yes.

Cler. Who shall speak for you?

Jur. Our fore-man.

Cler. What say you, look upon the prisoners: Is William Pen Guilty in manner and form, as he stands indicted, or Not guilty?

Fore-m. Here is our verdict, holding forth a piece of paper to the clerk of the peace, which follows:

"WE the jurors, hereafter, named, do find William Pen to be guilty of speaking or preaching to an assembly, met together in Gracechurch-street, the 14th of August last 1670. And that William Mead is Not guilty of the said indictment."

Fore-m. Thomas Veer, Charles Mijson, Edward Bushel, Greg. Walklet, John Hammond, John Baily, Henry Henley, William Lever, Henry Michel, James Damask, J. Brightman, Wil. Plumsted.

Obser. This both Mayor and Recorder resented at so high a rate, that they exceeded the bounds of all reason and civility.

May. What, will you be led by such a silly fellow as Bushel? an impudent canting fellow? I warrant you, you shall come no more upon juries in haste; you are a foreman indeed, addressing himself to the foreman, I thought you had understood your place better.

Rec. Gentlemen, you shall not be dismissed till we have a verdict, that the court will accept; and you shall be locked up, without meat, drink, fire, and tobacco; you shall not think thus to abuse the court; we will have a verdict, by the help of God, or you shall starve for it.

Pen. My jury, who are my judges, ought not to be thus menaced; their verdict should be free, and not compelled; the bench ought to wait upon them, but not forestall them. I do desire that justice may be done me, and that the arbitrary resolves of the bench may not be made the measure of my jury's verdict.

Rec. Stop that prating fellow's mouth, or put him out of the court.

May. You have heard that he preach'd, that he gathered a company of tumultuous people, and that they do not only disobey the martial power, but civil also.

Pen. It is a great mistake; we did not make the tumult, but they that interrupted us: The jury cannot be so ignorant, as to think, that we met there, with a design to disturb the civil peace, since (1st.) we were by force of arms kept out of our lawful house, and met as near it in the street, as their soldiers would give us leave; and (2dly,) because it was no new thing (nor with the circumstances express'd in the indictment) but what was usual and customary with us; 'tis very well known that we are a peaceable people, and cannot offer violence to any man.

Obser. The court being ready to break up, and willing to huddle the prisoners to their goal, and the jury to their chamber, Penn spoke as follows.

Pen. The agreement of twelve men is a verdict in law, and such a one being given by the jury, I require the clerk of the peace to record it, as he will answer it at his peril. And if the jury bring in another verdict contradictory to this, I affirm they are perjur'd men in law: And looking upon the

the jury, said, you are Englishmen, mind your privilege, give not away your right.

Bush. &c. Nor will we ever do it.

Obfer. One of the jury-men pleaded indisposition of body, and therefore desired to be dismissed.

May. You are as strong as any of them, starve them, and hold your principles.

Rec. Gentlemen, you must be contented with your hard fate, let your patience overcome it : for the court is resolved to have a verdict, and that before you can be dismissed.

Jury. We are agreed, we are agreed, we are agreed.

Obfer. The court swore several persons, to keep the jury all night without meat, drink, fire, or any other accommodation ; they had not so much as a chamber-pot, tho' desired.

Cry. O yes, &c.

Obfer. The court adjourns till seven of the clock next morning, (being the fourth instant, vulgarly called Sunday) at which time the prisoners were brought to the bar : The court sat, and the jury called to bring in their verdict.

Cry. O Yes, &c.—Silence in the court upon pain of imprisonment.

The jury's names called over.

Cler. Are you agreed upon your verdict ?

Jur. Yes.

Cler. Who shall speak for you ?

Jur. Our Fore-man.

Cler. What say you ? Look upon the prisoners at the bar : Is William Penn guilty of the matter whereof he stands indicted, in manner and form as aforesaid, or not guilty ?

Fore-m. William Penn is guilty of speaking in Gracechurch-street.

May. To an unlawful assembly ?

Bush. No, my Lord, we give no other verdict than what we gave last night ; we have no other verdict to give.

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May. You are a factious fellow, I'll take a course with you.

Blood. I knew Mr. Bushel would not yield.

Bush. Sir Thomas, I have done according to my conscience.

May. That conscience of yours would cut my throat.

Bush. No, my Lord, it never shall.

May. But I will cut yours so soon as I can.

Rec. He has inspired the jury ; he has the spirit of divination, methinks I feel him ; I will have a positive verdict, or you shall starve for it.

Pen. I desire to ask the Recorder one question, Do you allow of the verdict given of William Mead ?

Rec. It cannot be a verdict, because you were indicted for a conspiracy, and one being found not guilty, and not the other, it could not be a verdict.

Pen. If Not guilty be not a verdict, then you make of the jury and Magna Charta but a meer nose of wax.

Mead. How ! Is not guilty no verdict ?

Rec. No, 'tis no verdict.

Pen. I affirm, that the consent of a jury is a verdict in law ; and if William Mead be not guilty, it consequently follows, that I am clear, since you have indicted us of a conspiracy, and I could not possibly conspire alone.

Obfer. There were many passages, that could not be taken, which passed between the jury and the court. The jury went up again ; having received a fresh charge from the bench, if possible to extort an unjust verdict.

Cry. O yes, &c. Silence in the court.

Cour. Call over the jury. Which was done.

Cler. What say you ? Is William Penn Guilty of the matter whereof he stands indicted, in manner and form aforesaid, or Not guilty ?

L 111

Fore-m.

Fore-m. Guilty of speaking in Gracechurch-street.

Rec. What is this to the purpose? I say I will have a verdict. And speaking to Edw. Bushel, said, you are a factious fellow; I will set a mark upon you; and whilst I have any thing to do in the city, I will have an eye upon you.

May. Have you no more wit than to be led by such a pitiful fellow? I will cut his nose.

Pen. It is intolerable that my jury should be thus menaced: Is this according to the fundamental laws? Are not they my proper judges by the great charter of England? What hope is there of ever having justice done, when juries are threatened, and their verdicts rejected? I am concerned to speak and grieved to see such arbitrary proceedings. Did not the Lieutenant of the Tower render one of them worse than a felon? And do you not plainly seem to condemn such for factious fellows, who answer not your ends? Unhappy are those juries, who are threatened to be fined, and starved, and ruined, if they give not in verdicts contrary to their consciences.

Rec. My Lord, you must take a course with that same fellow.

May. Stop his mouth; Jailor, bring fetters, and stake him to the ground.

Pen. Do your pleasure, I matter not your fetters.

Rec. Till now I never understood the reason of the policy and prudence of the Spaniards, in suffering the inquisition among them: And certainly it will never be well with us, till something like unto the Spanish inquisition be in England.

Obfer. The jury being required to go together to find another verdict, and steadfastly refusing it (saying they could give no other verdict than what was already given) the Recorder in great passion was running off the bench, with these words in his mouth, "I protest I will sit here no longer to hear

these things;" at which the Mayor calling, "Stay, stay," he returned, and directed himself unto the jury, and spoke as followeth:

Rec. Gentlemen, we shall not be at this trade always with you; you will find the next sessions of Parliament there will be a law made, that those that will not conform shall not have the protection of the law. Mr. Lee, draw up another verdict, that they may bring it in special.

Lee. I cannot tell how to do it.

Jur. We ought not to be return'd, having all agreed, and set our hands to the verdict.

Rec. Your verdict is nothing, you play upon the court; I say you shall go together, and bring in another verdict, or you shall starve; and I will have you chartered about the city, as in Edward the Third's time.

Fore-m. We have given in our verdict, and all agreed to it; and if we give in another, it will be a force upon us to save our lives.

May. Take them up.

Offic. My Lord, they will not go up.

Obfer. The Mayor spoke to the Sheriff, and he came off of his seat, and said,

Sher. Come, Gentlemen, you must go up; you see I am commanded to make you go.

Obfer. Upon which the jury went up; and several sworn to keep them without any accomodation, as aforesaid, till they brought in their verdict.

Cry. O yes, &c. The court adjourns till to-morrow morning, at seven of the clock.

Obfer. The prisoners were remanded to Newgate, where they remained till next morning, and then were brought unto the court, which being sat, they proceeded as followeth:

Cry. O yes, &c. Silence in the court upon pain of imprisonment.

Cler.

Cler. Set William Penn and William Mead to the bar. Gentlemen of the jury, answer to your names; Thomas Veer, Edward Bushel, John Hammond, Henry Henly, Henry Michell, John Brightman, Charles Milson, Gregory Walklet, John Baily, William Leaver, James Damask, William Plumstead. Are you all agreed of your verdict?

Jur. Yes.

Cler. Who shall speak for you?

Jur. Our fore-man.

Cler. Look upon the prisoners. What say you? Is William Penn guilty of the matter whereof he stands indicted, in manner and form, &c. or not guilty?

Fore-m. Here is our verdict in writing, and our hands subscribed.

Obfer. The Clerk took the paper, but was stopt by the Recorder from reading of it; and he commanded to ask for a positive verdict.

Fore-m. That is our verdict, we have subscribed to it.

Cler. How say you? is William Penn guilty, &c. or not guilty?

Fore-m. Not guilty.

Cler. How say you? is William Mead guilty, &c. or not guilty?

Fore-m. Not guilty.

Cler. Then hearken to your verdict; you say that William Penn is not guilty in manner and form as he stands indicted; you say that William Mead is not guilty in manner and form as he stands indicted, and so you say all?

Jur. Yes, we do so.

Obfer. The bench being unsatisfied with the verdict, commanded that every person

should distinctly answer to their names, and give in their verdict, which they unanimously did, in saying, Not guilty, to the great satisfaction of the assembly.

Rec. I am sorry, gentlemen, you have followed your own judgments and opinions, rather than the good and wholesome advice, which was given you; God keep my life out of your hands; but for this the court fines you forty marks a man; and imprisonment till paid. At which Penn stepped up towards the bench, and said:

Pen. I demand my liberty, being freed by the jury.

May. No, you are in for your fines.

Pen. Fines! for what?

May. For contempt of the court.

Pen. I ask, if it be according to the fundamental laws of England, that any Englishman should be fined or amerced, but by the judgment of his Peers or jury; since it expressly contradicts the fourteenth and twenty-ninth chap. of the great Charter of England, which say, No free-man ought to be amerced, but by the oath of good and lawful men of the vicinage.

Rec. Take him away, take him away, take him out of the court.

Pen. I can never urge the fundamental laws of England, but you cry, Take him away, take him away. But it is no wonder, since the Spanish inquisition hath so great a place in the Recorder's heart. God Almighty, who is just, will judge you all for these things.

Obfer. They haled the prisoners into the bale-dock, and from thence sent them to Newgate, for non-payment of their fines; and so were their jury.

Articles of Impeachment of High-Treason and other High Crimes, Misdemeanors and Offences, against THOMAS EARL OF DANBY, Lord High Treasurer of ENGLAND ; as they were delivered in to the House of Lords, in the name of the Commons of England, by Sir Henry Capel, December 23. 1678.

I. **T**HAT he hath traiterously encroached to himself regal power, by treating in matters of peace and war with foreign ministers and ambassadors, and giving instructions to his Majesty's ambassadors abroad, without communicating the same to the secretaries of state, and the rest of his Majesty's council, against the express declaration of his Majesty and his Parliament; thereby intending to defeat and overthrow the provision that has been deliberately made by his Majesty and his Parliament for the safety and preservation of his Majesty's kingdoms and dominions.

II. That he hath traiterously endeavoured to subvert the ancient and well established form of government in this kingdom, and instead thereof to introduce an arbitrary and tyrannical way of government; and the better to effect this his purpose, he did design the raising of an army, upon pretence of a war against the French King, and to continue the same as a standing army within this kingdom: And an army being so raised, and no war ensuing, an Act of Parliament having passed to pay and disband the same; and a great sum of money being granted for that end, he did continue the army contrary to the said Act, and misemployed the said money given for the disbanding, to the continuance thereof, and issued out of his Majesty's revenues divers great sums of money for the said purpose, and wilfully neglected to take security of the pay-masters of the army, as the said Act required; whereby the said law is eluded, and the army is yet continued, to the great

danger and unnecessary charge of his Majesty and the whole kingdom.

III. That he traiterously intending and designing to alienate the hearts and affections of his Majesty's good subjects from his royal person and government, and to hinder the meetings of Parliaments, and to deprive his sacred Majesty of their safe and wholesome council, and thereby to alter the constitution of the government of this kingdom, did propose and negotiate a peace for the French King, upon terms disadvantageous to the interest of his Majesty and his kingdoms; for the doing whereof, he did endeavour to procure a great sum of money from the French King, for enabling him to maintain and carry on his said traiterous designs and purposes, to the hazard of his Majesty's person and government.

IV. That he is Popishly affected, and hath traitously concealed (after he had notice) the late horrid and bloody plot and conspiracy, contrived by the Papists, against his Majesty's person and government; and hath suppressed the evidence, and reproachfully discountenanced the King's witnesses in the discovery of it, in favour of Popery, immediately tending to the destruction of the King's sacred person, and the subversion of the Protestant religion.

V. That he hath wasted the King's treasure, by issuing out of his Majesty's exchequer several branches of his revenue for unnecessary pensions and secret services, to the value of 231,602 l. within two years, and that he hath wholly diverted out of the known method and government of the exchequer,

chequer one whole branch of his Majesty's revenue to private uses, without any account to be made of it to his Majesty in his exchequer, contrary to the express Act of Parliament, which granted the same; and he hath removed two of his Majesty's commissioners of that part of the revenue, for refusing to consent to such his unwarrantable actings therein, and to advance money upon that branch of the revenue for private uses.

VI. That he hath by indirect means procured from his Majesty to himself divers considerable gifts and grants of inheritance, of the ancient revenue of the crown, even contrary to Acts of Parliament.

For which matters and things the knights, citizens and burgeses of the Commons in Parliament, do, in the name of themselves, and of all the Commons of England, impeach the said Thomas Earl of Danby, Lord High-Treasurer of England, of High-treason, and other high crimes, misdemeanours and offences, in the said articles contained: And the said Commons, by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any other accusation or impeachment against the said Earl, and also of replying to the answers which the said Thomas Earl of Danby shall make to the premises, or any of them, or any impeachment or accusation that shall be by them exhibited, as the cause (according to course and proceedings of Parliament) shall require; Do pray, that the said Thomas Earl of Danby, may be put to answer all and every the premises, that such proceedings, trials, examinations and judgments may be upon them, and every one of them had and used, as shall be agreeable to law and justice, and that he may be sequestred from Parliament, and forthwith committed to safe custody.

Jovis 20 die Martii, 1678.

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Resolved, *Nemine contradicente.*

"That a message be sent to the Lords, to put them in mind of the impeachment of High-treason, exhibited against Thomas Earl of Danby, in the name of the Commons of England, and to desire that he may be forthwith committed to safe custody."

Resolved, &c.

"That it be referred to the committee of secrecy to draw up further articles against Thomas Earl of Danby."

Sabbati 22 die Martii, 1678.

Resolved, *Nemine contradicente.*

"That a message be immediately sent to the Lords, to remind their Lordships of the last message sent from this House relating to Thomas Earl of Danby; and to demand, that Thomas Earl of Danby may be forthwith sequestred from Parliament, and committed to safe custody."

Martis 25 die Martii, 1679.

"A message from the Lords by Baron Littleton, and Baron Thurland."

Mr. Speaker, We are commanded by the Lords to acquaint this House, That they sent to apprehend Thomas Earl of Danby, both to his house here in town, and to his house at Wimbolton; and that the gentleman usher of the black rod had returned their Lordships answer, that he could not be found.

Veneris 4 die Aprilis, 1679.

Resolved,

"That an humble address be made to his Majesty, to desire his Majesty to issue out his royal proclamation for the apprehending Thomas Earl of Danby; with the usual penalties upon such as shall conceal

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him: And that his Majesty should be further pleased to give order to the officers of his Majesty's household, That they take care that the said Earl of Danby be not permitted to reside within either of his Majesty's palaces of Whitehall, Somerset-house, and St. James. And it is referred to Mr. Powel, &c. to prepare and draw up the same, and present it to the House to-morrow morning."

The Plea of the Earl of Danby, late Lord High-Treasurer of England, to the Articles of Impeachment, and other High Crimes and Misdemeanors, and Offences, exhibited against him by the Name of Thomas, Earl of Danby, Lord High-Treasurer of England,

THE said Earl for plea, saith, and humbly offereth to your Lordships, as to all and every the treasons, crimes, misdemeanors, and offences, contained or mentioned in the said articles, that after the said articles exhibited, namely, the first of March, now last past, the King's most Excellent Majesty, by his most gracious letters patents of pardon, under his great seal of England, bearing date at Westminster, the said first day of March, in the one and thirtieth year of his Majesty's reign; and here, into this most high and honourable court, produced under the said great seal.

Of his special grace, certain knowledge, and meer motion, hath pardoned, remitted and released to him, the said Thomas Earl of Danby, all, and all manner of treasons, misprisions of treasons, insurrections, rebellions, felonies, exactions, oppressions, publications of words, misprisions, confederacies, concealments, negligencies, omissions, offences, crimes, contempts, misdemeanors and trespasses whatsoever, by himself alone, or with any other person or persons, or by any other, by the command, advice, assent, consent, or procurement of

him the said Thomas Earl of Danby, advised, committed, attempted, made, perpetrated, concealed, committed, or omitted, before the 27th day of February then and now last past, being also after the time of the said articles exhibited, although the said premises, or any of them did, or should touch or concern the person of his said Majesty, or any of his public negotiations whatsoever; and also his Majesty's affairs with foreign ambassadors sent to his said Majesty, or by not rightly prosecuting his Majesty's instructions and commands to his ambassadors, residing on his Majesty's behalf in foreign parts.

And as to all and singular accessaries to the said premises, and every of them, although he the said Thomas Earl of Danby were, or were not of the said premises, or any of them, indicted, impeached, appealed, accused, convicted, adjudged, outlawed, condemned, or attainted; and all and singular indictments, impeachments, inquisitions, informations, exigents, judgments, attainders, out-lawries, convictions, pains of death, corporal punishments, imprisonments, forfeitures, punishments, and all other pains and penalties whatsoever, for the same, or any of them; and all, and all manner of suits, complaints, impeachments and demands whatsoever, which his said Majesty, by reason of the premises, or any of them then had, or for the future should have, or his heirs, or successors, any ways could have afterwards against him the said Thomas Earl of Danby: And also suit of his Majesty's peace, and whatsoever to his Majesty, his heirs, or successors, against him the said Earl of Danby did, or could belong, by reason or occasion of the premises, or any of them. And his Majesty hath thereby given and granted his firm peace to the said Thomas Earl of Danby. And further, his Majesty willed and granted that the said letters-patents, and the said pardon

pardon and release therein contained, as to all the things therein pardoned and released, should be good and effectual in the law, although the treasons, misprisions of treason, insurrections, rebellions, felonies, exactions, oppressions, publications of words, misprisions of confederacies, concealments, negligences, omissions, offences, crimes, contempts, misdemeanors and trespasses, were not certainly specified. And notwithstanding the statute in the Parliament of the Lord Richard the Second, late King of England, in the 13th year of his reign, made and provided. And notwithstanding the statute in the Parliament of the Lord Edward the Third, in the fourteenth year of his reign, made and provided, or any other statute, act, or ordinance to the contrary thereof made and provided. And moreover, his said now Majesty, by his said letters-patents of his further grace, did firmly command all and singular Judges, Justices, officers, and others whomsoever, That the said free and general pardon of his said Majesty, and the general words, clauses and sentences abovesaid, should be construed, expounded, and adjudged in all his said Majesty's courts, and elsewhere, in the most beneficial ample and benign sense.

And for the better and more firm discharge of the said Earl, of, and from the crimes and offences abovesaid, according to the true intents of his Majesty, and in such beneficial manner and form to all intents and purposes whatsoever, as if the said treasons, crimes, offences, concealments, negligences, omissions, contempts and trespasses abovesaid, and other the said premises, by apt, express and special words had been remitted, released and pardoned. And that the said letters patents of pardon, and the release and pardon therein contained, shall be pleaded and allowed in all and every his Majesty's courts, and before all his Justices whatsoever, without any writ of allowance, any matter, cause, or thing

whatsoever in any ways, notwithstanding as by the said letters patents themselves more at large appeareth, which said letters patents follow in these words,

CAROLUS Secundus Dei Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defensor, &c. omnibus ad quos præsentis literæ nostræ pervenerint, salutem. Sciatis, quod nos pro diversis bonis causis & considerationibus nos ad hoc specialiter movent. De gratia nostra speciali, ac ex certa scientia & mero motu nostris pardonavimus relaxavimus, &c.

And the said Earl doth aver, That he the said Thomas Earl of Danby, in the said articles named, is the said Thomas Earl of Danby in the said letters-patents of pardon here produced, likewise named. Which pardon the said Earl doth rely upon, and pleaded the same in bar of the said impeachment, and in discharge of all the treasons, crimes, misdemeanors and offences contained, or mentioned in the said articles of impeachment, and every of them; and this the said Earl is ready to aver.

Whereupon he humbly prays the judgments of your Lordships, and that his Majesty's most gracious pardon abovesaid may be allowed: And that he the said Earl, by virtue hereof, may be (from all the said articles of impeachment, and all and every of the treasons and crimes therein alledged against him) acquitted and discharged.

A Copy of the Pardon of Thomas Earl of Danby.

CAROLUS Secundus, Dei Gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. omnibus ad quos præsentis literæ nostræ pervenerint, salutem. Sciatis, quod nos pro diversis bonis causis & considerationibus nos ad hoc specialiter moventibus,

moventibus, de gratia nostra speciali ac ex certa scientia & mero motu nostris, pardonavimus, remissimus & relaxavimus, ac per præsentis pro nobis, heredibus & successoribus nostris, pardonamus, remittimus & relaxamus prædicto, & perquam fideli consanguineo & consiliario nostro Thomæ Comiti Danbii, omnes & omnimodas proditiones, crimina læsæ Majestatis, misprisiones, proditionum, insurrectiones, verborum propalationes, misprisiones, confederationes, concelamenta, negligentias, omissiones, offensas, crimina contemptus, malefacta & transgressiones quæcunque, per se solum seu cum aliqua alia persona, vel aliquibus aliis personis, aut per aliquem alium, sive aliquos alios, ex præcepto, advisamento, assensu, consensu, seu procuratore ejusdem Thomæ Comitis Danbii, advisata, præcepta, attempta, facta perpetrata, concelata, commissa, seu omissa, ante 27 diem Februarii jam ultim. præteritum, licet præmissa, vel eorum aliqua, vel aliquod, tangunt vel tangat personam vel negotiationes nostras publicas qualescunque, nec non transactiones nostras cum forensicis legatis ad nos missis, vel non rite prosequendo instructiones & mandata nostra legatis nostris, in partibus extra marinis, ex parte nostra resident, ac etiam omnia & singula accessaria præmissorum & cujuslibet eorum, licet idem Thomas Comes Danbii de præmissis vel aliqua præmissorum indictatus, impetitus, appellatus, restatus, convictus, adjudicatus, utlegatus condemnatus vel attinctus; existit vel non existit, ac omnia & singula indictamenta, impetitiones, inquisitiones, informationes, exigenda judicia, attincta, utlegaria, convictiones, executiones, pœnas mortis, pœnas corporales, imprisonmenta, foris factura, punitioes, & omnes alias pœnas, & pœnalitates quascunque, pro eisdem vel eorum aliquo, ac omnia & omnimoda, sectas, querelas, impetitiones, & demanda quæcunque, quæ nos versus ipsum Tho-

mam Comitem Danbii, ratione præmissorum vel eorum alicujus, habuimus, habemus, seu in futurum habere poterimus, aut heredes, seu successores nostri, ullo modo habere poterint, in futuro, sectamque pacis nostræ, ac quæ ad nos heredes & successores nostros versus ipsum Thomam Comitem Danbii pertinet, seu pertinere poterit, ratione seu occasione præmissorum, seu eorum aliquorum vel alicujus, ac firmam pacem nostram. Et inde damus & concedimus per præsentis, & ulterius volumus, & concedimus, quod hæc literæ nostræ, ac hæc nostra pardonatio, remissio, relaxatio in eisdem contenta quoad omnia & singula superius pardonata, remissa, & relaxata, bonæ & effectuales in lege sint, & erint, licet proditiones, crimina læsæ Majestatis, misprisiones, proditionum, insurrectiones, rebelliones, felloniae, exactiones, oppressiones verborum propalationes, misprisiones, confederationes, concelamenta, negligentia, omissiones, offensæ, crimina contemptus, malefacta & transgressiones antedicta, minus certe specifiact, existunt. Et non obstante Statuto Parlamento Dom. Ricardi Secundi, nuper Regis Angliæ, Anno 13 regni sui edito, & proviso. Et non obstante Statuto in Parlamento Dom. Edvardi Tertii, nuper Regis Angliæ, Anno Regni sui 14 edito & proviso; aut aliquo alio statuto, actu vel ordinatione, in contrarium inde editis & provis. Et ulterius de uberiori gratia nostra firmiter præcipimus omnibus & singulis iudicibus, justiciariis, vel aliis quibuscunque, quod hæc præsentis litera & generalis pardonatio nostra & generalia verba, clausulæ & sententiæ supradicta, construantur, exponantur & adjudicentur, in omnibus curiis nostris & alibi, in beneficentissimo, amplissimo, & benignissimo sensu, & pro maxima & firmiori exoneratione prædicti Thomæ Comitis Danbii de & à criminibus & offensis prædictis secundum veram intentionem nostram, & in tam beneficali modo & forma & ad omnes intentionis

tionis & proposita, prout si prædictæ prodicionēs, crimina læsæ Majestates, misprisiones, prodicionum crimina offensæ misprisiones, concealmenta, negligentia, omissiones, contemptus, & transgressiones prædictæ ac cetera præmissa per apta expressa, & specialia verba pardonata, remissa & relaxata fuissent. Et quod hæc literæ patentes, remissio, relaxatio, & pardonatio, omnia in eisdem contenta, in quibuscunque curiis & coram quibuscunque; justiciariis nostris, placitentur & allocentur, sine aliquo breve de allocatione, aliqua re, causa vel materia quacunque; in aliquo non obstante. In cuius rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Westmonasterium 1 die Martii Anno Regni nostri 31.

CHARLES.

CHARLES the Second, by the grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. To all to whom these our letters-patent shall come, sendeth greeting. Know ye, that we for divers good causes and considerations, Us hereunto especially moving, have out of our special favour, certain knowledge and meer motion of our own, pardoned, remitted and released, and by these presents for Us, our Heirs and Successors, do pardon, remit and release to our well beloved and right trusty cousin and counsellor, Thomas Earl of Danby, all, and all manner of treasons, as well high treason, as misprisions of treason, insurrections, revealing of councils, misprisions, confederations, concealments, neglects, omissions, offences, crimes, contempts, misdeeds and transgressions whatsoever, by himself alone, or with any other person, or persons, or by any other, or others, by the command, advice, assent, consent, or procurement of the said Thomas Earl of Danby, advised, commanded, attempted, done, performed, concealed, committed, or omitted.

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ted, before the 27th day of February, now last past. Although the premises, or any of them touch, or may touch our person, or our public negotiations whatsoever, or our transactions with foreign ambassadors unto Us sent, or for not right following our instructions and mandates to our own ambassadors resident on our behalf in foreign parts beyond the seas: And alio all and singular accessaries to the premises, or any of them although the said Thomas Earl of Danby be indicted, impeached, appealed, arrested, convicted, adjudged, or as ambassador condemned, or be, or be not attainted of the premises, or any of them; and all and every indictments, impeachments, inquisitions, informations, judgments to be required, attainders, outlawries, convictions, penalties of death, corporal punishments, imprisonments, forfeitures, sufferings, together with all other pains and penalties whatsoever, for the same or any of them, and all, and all manner of suits, complaints, impeachments and demands whatsoever, which We against the said Thomas Earl of Danby, by reason of the premises, or any of them, have had, now have, or hereafter may have, or which our heirs or successors in any manner may have hereafter, together with any suit for breach of our peace, which to us, our heirs, or successors, against the said Thomas Earl of Danby doth, or may belong, by reason or occasion of the premises, of some or any of them; We do for ever indemnify him. Moreover we give and grant by these presents, and it is our further will and pleasure, that these our letters, and this our pardon, remission and release therein contained, as to all and singular the things above pardoned, remitted and released, be and shall be good and effectual in law, although the treasons, high treasons, misprisions of treasons, insurrections, rebellions, felonies, extortions, oppressions, betraying of councils, confederacies, concealments, negligencies, omissions

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sions, offences, crimes, contempts, misdemeanours and transgressions aforesaid, be not fully specified. And notwithstanding the statute of Richard the Second, late of England King, in the 13th year of his reign made and provided. And notwithstanding the statute by the Parliament of Edward the Third, late King of England, in the 14th year of his reign made and provided, or any other statute, act, or ordinance to the contrary heretofore published and provided: And moreover of our abundant grace, we do strictly command all Judges, Justices, or others whosoever, that this present letter, with our general pardon, and general words, clauses, and sentences abovesaid, shall be construed, expounded and adjudged in all our courts, and elsewhere, in the most beneficial, most ample, and most favourable sense, and for the greatest and firmest discharge of the aforesaid Thomas Earl of Danby, of and from the crimes and offences aforesaid, according to our true intention, and in so beneficial a manner and form, and to all intents and purposes, so as if the said treasons, high treasons, misprisions of treason, crimes, offences, omissions, contempts, concealments, negligence and transgression aforesaid, and other the premises, had been by apt, express and special words, pardoned, remitted and released. And that these letters-patents, remission, release and pardon, with all things therein contained, in whatsoever courts, and before whatsoever our Justices, shall be pleaded and allowed, without any writ of allowance, any thing, cause, or matter whatsoever in any wise notwithstanding. In witness whereof we have caused these our letters-patents to be made. Witness myself at Westminster, the first day of March, in the 31st year of our reign.

The Reasons and Narrative of Proceedings betwixt the two Houses; which were de-

livered by the Commons to the Lords, at the Conference, on Monday the 26th of May, 1679.

THE Commons have always desired, that a good correspondence may be preserved between the two Houses.

There is now depending between your Lordships and the Commons a matter of the greatest weight: In the transactions of which, your Lordships seem to apprehend some difficulty in the matters proposed by the Commons.

To clear this, the Commons have desired this conference; and do readily acknowledge, that any change in judicature in Parliament, made without consent in full Parliament, to be of pernicious consequence, both to his Majesty and his subjects; and conceive themselves obliged to transmit to their posterity, all the rights which of this kind they have received from their ancestors, by putting your Lordships in mind of the progress that has already been between the two Houses, in relation to propositions made by the Commons, and the reasonableness of the propositions themselves; they doubt not to make it appear, that their aim has been no other, than to avoid such consequences, and preserve that right; and that there is no delay of justice on their part. And to that end, do offer to your Lordships the ensuing reasons and narrative: That the Commons in bringing the Earl of Danby to justice, and in discovery of that execrable and traitorous conspiracy, have laboured under many great difficulties, is not unknown to your Lordships.

Nor is it less known to your Lordships, that upon the impeachment of the House of Commons against the Earl of Danby for high treason, and other high crimes, misdemeanours and offences, even the common justice of sequestering him from Parliament, and forthwith committing him to safe

safe custody, was then required by the Commons, and denied by the House of Peers, though he then sat in their House; of which your Lordships have been so sensible, that at a free conference the 10th of April last, your Lordships declared, That it was the right of the Commons, and well warranted by precedents of former ages, That upon an impeachment of the Commons, a Peer so impeached ought of right to be ordered to withdraw, and then to be committed. And had not that justice been denied to the Commons, a great part of this session of Parliament, which hath been spent in framing and adjusting a bill, for causing the Earl of Danby to appear, and to answer that justice from which he was fled, had been saved, and had been employed for the preservation of his Majesty's person, and the security of the nation; neither had he had the opportunity of procuring for himself that illegal pardon, which bears date the 1st of March last past, and which he hath now pleaded in bar of his impeachment: Nor of wasting so great a proportion of the treasure of the kingdom, as he hath done since the Commons exhibited their articles of impeachment against him.

After which time thus lost, by reason of the denial of that justice, which of right belonged to the Commons upon their impeachment, the said bill being ready for the royal assent, the said Earl then rendered himself; and by your Lordships order of the 16th of April last, was committed to the Tower. After which he pleads the said pardon, and being pressed, did at length declare, he would rely upon, and abide by that plea; which pardon pleaded, being illegal and void, and so ought not to bar or preclude the Commons from having justice upon the impeachment; They did thereupon, with their Speaker, on the 5th of May instant, in the name of themselves and all the Commons of England, demand judgment against the said Earl, upon their impeachment; not doubt-

ing, but that your Lordships did intend in all your proceedings upon the impeachment, to follow the usual course and method of Parliament.

But the Commons were not a little surprised by the message from your Lordships, delivered them on the seventh of May; thereby acquainting them, that as well the Lords Spiritual as Temporal had ordered, that the 10th of May instant, should be the day for hearing the Earl of Danby, to make good his plea of pardon. And that your Lordships had addressed to his Majesty for naming of a Lord High Steward in the case of the Earl of Danby.

Upon consideration of this message the Commons found, that the admitting of the Lords Spiritual to exercise jurisdiction in these cases, was an alteration of the judicature in Parliament; and that if a Lord High Steward should be necessary upon trial on impeachments of the Commons, the power of judicature in Parliament, upon impeachments, might be defeated, by suspending or denying a commission to constitute a Lord High Steward.

And that the said day of trial appointed by your Lordships, was so near to the time of your said message, that these matters, and the method of proceeding upon the trial, could not be adjusted by conference betwixt the two Houses, before the day so nominated. And consequently, the Commons could not then proceed to trial, unless the zeal which they have for speedy judgment against the Earl of Danby should induce them at this juncture, both to admit the enlargement of your Lordships jurisdiction, and to sit down under these or any hardships, though with the hazard of all the Commons power of impeaching for time to come, rather than the trial should be deferred for some short time, whilst these matters might be agreed on and settled.

For reconciling differences in this great and weighty matter, and for saving that time,

time which would necessarily have been spent in debates and conferences betwixt the two Houses, and for expediting the trial, without giving up the power of impeachment, or rendering it ineffectual.

The Commons thought fit to propose to your Lordships, that a Committee of both Houses might be appointed for this purpose. At which Committee (when agreed to by your Lordships) it was then agreed, that the proposition as to the time of the trial, should be the last thing considered. And the effect of this agreement stands reported upon your Lordships books.

After which, the Commons communicated to your Lordships, by your Committee, a vote of theirs, (*viz.*) That the Committee of the Commons should insist upon their former vote of their House, That the Lords Spiritual ought not to have any vote in any proceedings against the Lords in the Tower, and that when that matter would be settled, and the method of proceedings adjusted, the Commons should then be ready to proceed upon the trial of the pardon of the Earl of Danby, against whom they had before demanded judgment; but the Commons as yet received nothing from your Lordships towards an answer of that vote, save that your Lordships have acquainted them, that the Bishops have asked leave of the House of Peers, that they might withdraw themselves from the trial of the Five Lords, with liberty of entering their usual protestation.

And though the Commons committee have almost daily declared to your Lordships committee, that that was a necessary point of right to be settled before the trial, and offered to debate the same; your committee always answered, That they had not any power from your Lordships, either to confer upon, or to give any answer concerning that matter.

And yet your Lordships, without having given the Commons any satisfactory answer

to the said vote, or permitting any conference or debate thereupon, and contrary to the said agreement, did, on Thursday the 22d of May, send a message to the Commons, declaring, That the Lords Spiritual as well as Temporal, had ordered, that the 27th of this instant May, be appointed for the trial of the Five Lords.

So that the Commons cannot but apprehend that your Lordships have not only departed from what was agreed on, and in effect laid aside that committee which was constituted for preserving a good understanding betwixt the two houses, and better dispatch of the weighty affairs now depending in Parliament, but must also needs conclude from the message, and the votes of your Lordships on the 14th of May, that the Lords Spiritual have a right to stay and sit in court, till the court proceeds to the vote of Guilty or not Guilty. And from the Bishops asking leave (as appears by your Lordships books two days after your said vote) that they might withdraw themselves from the trial of the said Lords, with liberty of entering their usual protestation, and by their persisting still to go on and give in their votes, proceeding upon the impeachment; that their desire of leave to withdraw at the said trial, is only an evasive answer to the before mentioned votes of the Commons, and chiefly intended as an argument for a right of judicature in proceedings upon impeachments, and as a reserve to judge upon the Earl of Danby's plea of pardon, and upon these and other like impeachments, although no such power was ever claimed by their predecessors, but is utterly denied by the Commons. And the Commons are the rather induced to believe it so intended, because the very asking leave to withdraw, seems to imply a right to be there, and that they cannot be absent without it.

And because by this way they should have it in their power, whether or no for the

the future, either in the Earl of Danby's case, or any other, they will ever ask leave to be absent; and the Temporal Lords a like power of denying leave, if that should once be admitted necessary.

The Commons therefore are obliged not to proceed to the Trial of the Lords on the 27th of this instant May, but to adhere to their *aforefaid* Vote: And for their so doing, besides what hath been now and formerly by them said to your Lordships, do offer you these Reasons following:

R E A S O N S.

I. Because your Lordships have received the Earl of Danby's Plea of Pardon with a very long and unusual protestation, wherein he hath aspersed his Majesty by false suggestions, as if his Majesty had commanded or countenanced the crimes he stands charged with; and particularly suppressing and discouraging the discovery of the plot, and endeavouring to introduce an arbitrary and tyrannical way of government; which remains as a scandal upon record against his Majesty, tending to render his person and his government odious to his people; against which it ought to be the first and principal care of both Houses, to vindicate his Majesty, by doing justice upon the said Earl.

II. The setting up a pardon to be a bar of an impeachment, defeats the whole use and effect of impeachments; and should this point be admitted, or stand doubted, it would totally discourage the exhibiting any for the future: Whereby the chief institution for the preservation of the government (and consequently the government itself) would be destroyed. And therefore the case of the said Earl (which in consequence concerns all impeachments whatsoever) ought to be determined before that

of the said Five Lords, which is but their particular case.

And without resorting to many authorities of greater antiquity, the Commons desire your Lordships to take notice (with the same regard they do) of the declaration which that excellent Prince, King Charles the First of blessed memory, made in this behalf, in his answer to the nineteen propositions of both Houses of Parliament: Wherein, stating the several parts of this regulated monarchy, he says, "The King, the House of Lords, and the House of Commons, have each particular privileges:" And among those which belong to the King, he reckons "Power of Pardoning." After the enumerating of which, and other his prerogatives, his said Majesty adds thus: "Again, that the Prince may not make use of this high and perpetual power, to the hurt of those for whose good he hath it, and make use of the name of public necessity for the gain of his private favourites and followers, to the detriment of his people. The House of Commons (an excellent conserver of liberty, &c.) is solely intrusted with the first propositions concerning the levies of monies, and the impeaching of those who for their own ends, though countenanced by any surreptitiously gotten command of the King, have violated the law, which he is bound (when he knows it) to protect, and to the protection of which they were bound to advise him, at least not to serve him in the contrary. And the Lords being trusted with a judicatory power, are an excellent screen and bank between the Prince and people, to assist each against any incroachments of the other; and by just judgments to preserve that law, which ought to be the rule of every one of the three, &c. Therefore the power legally placed in both Houses, is more than sufficient to prevent and restrain the power of tyranny, &c."

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III. Until

III. Until the Commons of England have right done them against this plea of pardon, they may justly apprehend, that the whole justice of the kingdom, in the case of the Five Lords, may be obstructed and defeated by pardons of like nature.

IV. An impeachment is virtually the voice of every particular subject of this kingdom, crying out against an oppression, by which every member of that body is equally wounded; and it will prove a matter of ill consequence, that the universality of the people should have occasion ministred and continued to them, to be apprehensive of utmost danger from the crown, from whence they of right expect protection.

V. The Commons exhibited articles of impeachment against the said Earl, before any against the Five other Lords, and demanded judgment upon those articles: Whereupon, your Lordships have appointed the trial of the said Earl to be before that of the other Five Lords; Now your Lordships having since inverted that order, gives a great cause of doubt to the House of Commons, and raises a jealousy in the hearts of all the Commons of England, that, if they should proceed to the trial of the said Five Lords in the first place, not only justice will be obstructed in the case of those Lords, but that they should never have right done them in the matter of this plea of pardon, which is of so fatal consequence to the whole kingdom, and a new device to frustrate public justice in Parliament.

Which reasons and matters being duly weighed by your Lordships, the Commons doubt not but your Lordships will receive satisfaction concerning their propositions and proceedings; and will agree, That the Commons ought not, nor can, without deserting their trust, depart from their former vote communicated to your Lordships; "That the Lords Spiritual ought

not to have any vote in any proceedings against the Lords in the Tower; and when that matter shall be settled, and the methods of proceedings adjusted, the Commons shall then be ready to proceed upon the trial of the Earl of Danby."

May 27, 1679.

The narrative and reasons delivered at the conference yesterday with the House of Commons were again read, and after a long debate, the vote of this House, dated the 13th of May instant, and the explanation thereupon, dated the 14th instant, were read, and the question was put, Whether to insist upon these votes concerning the Lords Spiritual, and it was resolved in the affirmative.

DISSENTERS Present.

Buckingham	Newport
Huntingdon	Say and Seal
Kent	P. Wharton
Shaftsbury, P. R.	Leicester
Bedford	Scarsdale
Winchester	Stratford
Rochester	Derby
North and Grey	Delamer
Suffolk	Howard
J. Lovelace	Paget
Townshend	Clare
Herbert	Salisbury
Gray	Falconberg
Stamford	Windfor.

The Honourable Mr. Powel's Speech in the House of Commons, upon the Earl of Danby's Impeachment, Pardon and Plea.

Mr. Speaker,

I Should have been pleased to have heard (somewhat omitted) needful to have been spoken unto, from some other Member of this

this House, rather than myself; it is concerning the Earl of Danby, who stands impeached by the Commons of England of High-Treason.

The person, to whom we owe the dangers and fears of the French King against us.

The person, to whom we owe the threats and severe answers to those humble addresses we made the last sessions of Parliament.

The person, to whom we owe the ruins of this nation, and exhausting the King's revenue.

The person, to whom we owe the expence of 200,000*l.* and upwards, within a year, unaccounted for.

The person, to whom we owe the many prorogations that happened in the last Parliament, when many profitable bills were ready for passing.

The person, to whom we owe the raising of a standing army, to be kept up by the receipt of six millions of livres yearly, for three years together, to enslave us and our religion.

The person, to whom we owe the late bone that was thrown in the sitting of the last Parliament, to hinder the good issue that might have come by their proceedings; who is now laying down his staff, and making up his accounts in the treasury as he pleaseth, to enrich himself out of the spoils of the people, and so depart.

My humble motion is, That a message be sent immediately to the Lords from the Commons of England, to desire their Lordships, That Thomas Earl of Danby be immediately committed to safe custody, he being impeached by the Commons of England of High-Treason.

The Earl of Danby's Speech in the House of Peers, upon an Impeachment of High Treason, &c. brought up against his Lordship by the House of Commons, December 23, 1678.

My Lords,

I Hope you will not enter upon any other business, before you have given that liberty to me, which is the privilege of every Peer, to be heard upon any accusation that is brought against him, though of far less moment than what hath been newly read against myself.

I confess I should have heard this charge with horror, if the matter of it had been true; but I thank God, I know my innocence to be so great, that it protects me from all sorts of fear, but that of lying under so black a character, as may be believed by those that cannot hear my defence; though I have the confidence to think that it is not truly believed in the hearts of the greatest part of those that have been informed against me.

I must needs confess, that I thought myself the last man in this kingdom that should ever have been in danger of being accused for treason, because I know no man that abhors it more, and that would pursue it more vigorously than myself, against any that should be guilty of it. Nay, to such a degree is my detestation of that crime, that were I sure the dearest child I have were guilty of it, I would willingly be his executioner.

My Lords, I know this is not the time for me to enter regularly upon my defence, because I know your Lordships will first order me a copy of my charge, and appoint me a time for my vindication; when I doubt not but to do it to the full satisfaction of your Lordships, and all the world. In the mean time I will only beg leave to observe to your Lordships, That those articles in this charge which can seem to have any thing of treason in them, have their answer so obvious, that there is very little in them which may not be answered by many others as well as myself, and some of them by every man in the kingdom.

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The first, which is the assuming regal power, I confess I do not understand; having never in my life done any thing of great moment, either at home, or relating to foreign matters, for which I have not always had his Majesty's command. And although I am far from having been the most cautious man in taking care of my own security, (which perhaps my great innocence hath been the cause of) yet I have not been so wanting of common prudence, as in the most material things not to have had his Majesty's orders and directions under his own hand, and particularly for the letters now made use of against me.

The second, I think, doth scarce need my giving any answer to; it being obvious, that the army was no more raised by me, than by every Lord in this House: And whoever is in that station which I hold, must certainly be a fool, to desire any thing which creates a want of money, especially so great an one, as the charge of an army must necessarily and immediately produce. And for one part of the article concerning the Pay-master of the army, it is in fact otherwise; for security from the Pay-master has been taken in the sum of four hundred thousand pounds.

The third is of the same nature with the first, and comes from the same foundation, which is, what a gentleman had thought fit to produce to the House of Commons. I will not now censure his action, I think it will do enough for itself; I will only say, that although I take it for one of the greatest misfortunes which can befall a man, to lie under such a charge of the House of Commons, yet I would much sooner choose to be under that unhappiness, than under his circumstances.

The fourth article is not only false in every part of it, but it is not possible to believe it true, without my being the greatest fool on earth, as well as the blackest villain. For were I capable of such a wickedness,

yet the more wicked any man is, the more he is carried to his own interest; and is it possible any thing under heaven can agree less with my interest, than the destruction of this King? Can I possibly hope to be better than I am? And is it not apparent, that there is not one man living, whose happiness depends so much as mine upon the preservation of his person?

My Lords, I know there is not a man in the world, that can in his heart think me guilty of that part of the article, if I should say nothing to it. But besides, I was so far from concealing this hellish plot, that it is notoriously known, his Majesty sent me the first notice of it, together with forty-three heads of the information, before I knew a syllable of it from any body else: And it hath been owned at the bar of the House of Commons by him (from whom only I had the intelligence) that he had all the encouragement and dispatch from me that I could give him. Besides, when it was disclosed to the council-board, he told some of the Clerks of the council, (as he had done me divers times before) that it would have been much better, and more would have been discovered, if it had been longer kept private. Besides this, I had the fortune to be particularly instrumental in seizing Mr. Coleman's papers, without which care there had not one of them appeared, and consequently, the best and most material evidence which is yet of the plot, had been wholly wanting. And certainly this is the first time that any man was accused to be the concealer of that plot, whereof he hath been a principal means of procuring the discovery.

For that part of the article that says, I am popishly affected, I thank God, that the contrary is so known to all the world, that even some of those that voted against me, did own their knowledge of the falsity of that allegation; and I hope I have thro' my whole life given so good testimony of my

my religion, both in my own family and by my services to the church, (whenever it hath lain in my power) that I shall not need much vindication in that particular: And I hope your Lordships will forgive me my weakness, in telling you, that I have a younger son in the House of Commons, whom I shall love the better as long as I live, for moving to have that part of the article to stand against me, that by that pattern it might appear, with what sort of zeal the whole hath been carried to my prejudice.

The fifth article will, upon examination, appear to be as ill grounded as any of the rest; and I am sorry I am able to give one reason, which is, That I have known no treasure in my time to waste, having entered upon an empty treasury, and never seen one farthing given to his Majesty (in almost six years) that hath not been appropriated to particular uses, and strictly so applied by me, as the Acts have directed. And there hath not been one of those aids which, instead of giving the King money, hath not cost him more out of his own purse, to the same uses, as doth appear by the larger dimensions of the new ships, and so in other things; Inasmuch that I take upon me the vanity to say, That by the payments I have made to the navy and seamen, beyond former times; the paying off the greatest part of the debt which was stopped in the Exchequer before my time; by my own punctuality in the course of payments, and by other things which I am able to shew, I doubt not but to appear meritorious, instead of being criminal upon that article.

As to the sixth article, which mentions my great gettings, I cannot deny, but that I serve a master, whose goodness and bounty hath been a great deal more to me than I have deserved, and to whom I can never pay gratitude enough by all the services of my life. But when the particulars of those gettings shall appear, it will be

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found very contrary to what is suggested abroad; and that in near six years time in this great place, I have not got half that, which many others have got in lesser places in half that time. And from the examination of this, which I desire may be seen, there will arise matter to accuse my prudence, in not having done for my family what justly I might, but nothing to arraign either my honour, my conscience, or my faithful service to the crown.

My Lords; If my obedience to the King shall not be my crime, I think nothing else will stick upon me from these articles; for my own heart flatters me to believe, that I have done nothing but as a true protestant, and a faithful servant both to my King and country. Nay, I am as confident, as that now I speak, that had I either been a Papist, or friend to the French, I had not been now accused. For I have reason to believe, that the principal informer of the House of Commons hath been assisted by French advice to this accusation; and if the gentleman, Mr. Montague, were as just to produce all he knows for me, as he hath been malicious to shew what may be liable to misconstruction against me, or rather against the King, (as indeed it is) no man can vindicate me more than himself. Under whose hand I have it to shew, how great an enemy to France I am thought, how much I might have had to have been otherwise; and what he himself might have had for getting me to take it. But I do now wonder this gentleman will do me no right, when he does not think fit to do it to his Majesty (upon whom chiefly this matter must reflect.) Although he knows, as will appear under his hand, that the greatest invitations to his Majesty, for having money from France, have been made by himself; that if his Majesty would have been tempted for money, he might have sold towns for as much as if they had been his own; and the money have been conveyed as privately as he pleased; that his Majesty might have

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made matches with France, if he would have consented to give them towns; and yet that the King hath always scorn'd to yield the meanest village that was not agreed to by the Spaniard and Hollander. That gentleman hath often pretended how much his own interest in France was diminished, only by being thought my friend. And besides divers other instances, I have under his hand, to shew the malice of the French court against me, I sent two of his letters to the House of Commons, which shew how Monsieur Ruvigny was sent hither on purpose to ruin me; which I am well assured at this time they would rather see, than of any one man in England. Besides what that gentleman could say of this kind (if he pleased) I hope his Majesty will give me leave (in my defence) to say in his presence, and in the hearing of divers Lords, with whom I have the honour to sit in the committee of foreign affairs, that which were it not true, his Majesty must think the impudentest and worst of men to affirm before him, That ever since I had the honour to serve his Majesty to this day, I have deliver'd it as my constant opinion, that France was the worst interest his Majesty could embrace, and that they were the nation in the world from whom I did believe he ought to apprehend the greatest danger; and who have both his person and government under the last degree of contempt: for which reason alone (were there no other) I would never advise his Majesty to trust to their friendship.

My Lords, 'Tis my greatest happiness, that your Lordships are my Judges; whose wisdom and justice are so great, that you will both discern the truth of the evidence when it shall come before you, and in the mean time distinguish truly what the crimes are (if they could be proved) and not what they are called. For this reason this House hath wisely provided to have the special matter before them, to the end, they

may be satisfied whether the charge have its right denomination; for otherwise it were to no purpose to desire special matter, unless it were to see whether the special matter alledged be what it is called. As for example, if a man were accused of having traiterously passed the river in a pair of oars, this is special matter, and stiled treason, by inserting the word traiterously; yet your Lordships would not therefore proceed as taking it for treason. So in this case, I beg for all your Lordships sakes, as well as my own, that you will please to use that caution which will be necessary for all your Lordships safety and seats in this House. For I beseech your Lordships to consider, whether such a precedent may go hereafter? What the House of Commons may do in such a case, there is no question but his Majesty may do the same by his attorney; and what either of them may do against one Lord, they may do against more; (and we have seen it done in our days against all the Bishops at once.) Were it not very precariously then that your Lordships hold your seats here, when by either of these ways as many of your Lordships, as for a time it might be convenient to remove, should be at the mercy of having a thing call'd treason, whethat it be so or no.

Truly, my Lords, I have reason to believe, that in the House of Commons the matter of my charge (if proved) was not thought to amount to treason; either by statute or common law; and I hope your Lordships have too sad an example in your memory, ever to assist the making of treason by accumulation.

I should therefore not only wrong my own innocence, but the right of the peers, to submit to answer matters of misdemeanor, as a criminal in treason.

My Lords, I wonder not at the malicious prosecution of those who would have me taken for what they truly are. For I am well assured, that neither the French take

take me to be of their interest, nor the Papists to be of their religion: But I am troubled to fall under so severe a censure of the House of Commons, although I cannot blame them, but my accusers, who have so wrongfully informed them.

My Lords, I will conclude with this comfort, that I do not in the least apprehend the matter of my charge under the security of your Lordships justice; and will therefore trouble your Lordships no longer at this time, but only to pray your directions whether I am to withdraw, which I shall readily obey.

The Earl of Danby's Arguments at the Court of King's-Bench, upon his Lordship's Motion for Bail, the 27th Day of May, Term. Pasch. 1682, &c.

IMMEDIATELY after his Lordship was in Court, the return of the *Habeas Corpus* was read, and Mr. Saunders (of Council for his Lordship) did move the Court, That whereas in Easter-Term, 1681, the Court had dismissed his Lordship with a declaration, that they would take into their consideration till the term following, what answer they would make to what had then been said to them by his Lordship and his Council; he therefore moved, That they might now accordingly know the pleasure of the Court, and that they would be pleased to grant bail to the Earl of Danby.

But before the said Mr. Saunders could well have pronounced the foregoing words, the Lord Chief Justice Pemberton did reprimand the said Mr. Saunders, for having offered to impose upon the Court what had never been said by them; saying, That there was no such thing as their having said, at any time, that they would take the Earl of Danby's case into farther consideration; for that they had told my Lord of Danby the last time, That it was not in their power to give him any relief at all; and that he therefore wondered, and must

extreamly blame Mr. Saunders, for moving the Court again in a matter to which they had already given such a positive answer; and could not but admire, that he should so misinform his client, as to give him any such advice, which could only be to the giving both him and the Court an unnecessary trouble.

To all which Mr. Saunders replied, That he humbly begged his Lordship's pardon, if he had mistaken him; for that truly he did understand, that his Lordship had declared that he would take time to consider of my Lord of Danby's case till the following term; but that if it was a mistake, he must beg his Lordship's pardon, and did believe the rest of his brethren took it so, as well as himself.

The Earl of Danby then spoke himself for about two hours, and said to the Lord Chief Justice, That he met with an objection, which he did not expect; and that he must beg his Lordship's pardon, not to let that pass for a mistake which his Council had affirmed, of the Court's having taken time to consider of his case, till the next term after that of his Lordship's being last there; for that his Lordship did therein appeal both to the rest of the Judges, which were upon the Bench with him, and to all other persons whatsoever, who were then in Court, whether his Lordship had not said, that if he (meaning the Earl of Danby) pleased, they would take time to consider of his case till the next term; and he did declare upon his honour, that these words had been pronounced to him by my Lord Chief Justice himself, and that he did then accept it as a favour from the Court, and did return his humble thanks to them for it: insomuch, that his Lordship said, That he confessed he was very much surprized to meet with such an introduction at the first entrance into a matter which he conceived to be of so great weight, as he doubted not but

but he should make this case of his appear to be.

But yet, that it did give him reason to believe, that he came with some prejudice before his Lordship, and that they were so much prepossessed in this matter, that if he did not think every man in England would find that he might be concerned in what resolution should be given in this case, as well as himself, he should scarcely have ventured upon it, though he had lain so long under so unreasonable a confinement, as he took himself to do; and therefore he must desire their Lordships patience and attention to what he had to offer in his own behalf, and (as he believed) in the behalf of the liberty of the subject in general.

His Lordship, directing himself to the Lord Chief Justice, said, It was just now a year since he was before his Lordship in this Court; and that he was assured, that his Lordship did then please to tell him, That they would take time to the following Term to consider of what they should think fit to do in his Lordship's case: But he said, that care was then taken the first day of that following Term to prevent his coming there, by an indictment which was brought against him (ready cut and dry'd, as he had been told) for his being privy to the murder of Sir Edmund-Bury Godfrey.

He said he did not wonder at it, because there was nothing so black, which had not been invented to be said against him; but, he confessed, he did wonder to hear, that such an evidence of an Irish Papist (who was upon trial for his own life, and upon an hear-say only) should be believed against an English Protestant, by a Jury of Englishmen, and some of them gentlemen; but yet that wonder had been much abated, when he heard that the same foreman had been as favourable in the case of a notorious murder, as he had been ready to find that murder against him, which had not

the least probability in it, and which no man could think of with more detestation both of the fact, and of any man that could have an hand in it, than himself.

However, this prevented him from coming there again, till after notice had been given to Sir Edmund-Bury Godfrey's brothers, to know if they had any thing further to say against him on that matter, and that he could get himself discharged from that indictment; and as to the wretch himself, Fitz-Harris, (who had accused him) he did two days before his death, send the minister of the Tower to his Lordship, to beg of him, that before he died, his Lordship would forgive him his having sworn falsely against him; and he did confess, that he was put upon it to save his own life; and did say by whom he was prompted to it. And whether it proceeded from those men, who might think their villainies discovered, and so might fear they could no way be safe but by putting that matter yet farther against him, or from what other cause, his Lordship could not tell; but if his Lordship was not misinformed) he did hear that some men were still endeavouring to get something more of the same nature to be sworn against him, if they can contrive how to make their forged testimonies to agree about it.

He said he thought that time would have tired out the malice of such blood-suckers before now, whom he had found so busy, for the first year and half after his imprisonment, that he was not a week without endeavours used by strange people to get to speak with him, and such as he had reason often to suspect to be Knights of the Post; amongst whom the story of one Magrath, (another Irishman) he said, was notably remarkable in his endeavour (under pretence of kindness) to have made him their tool, to prove, that Sir Edmund-Bury Godfrey had killed himself: But he said, he had the good fortune immediately to detect that

that villany, as he hoped yet to live to do of some others; but that in the mean time he foresaw, that he was always to be a particular object of the malice of such men, so long as he was left under this confinement, from which he saw no hopes to be relieved, but by that Court where the law directs every Englishman to come for justice, that is oppress'd in his liberty.

He said, he hoped his Lordship would forgive him for having been a little tedious on that subject of Sir Edmund-Bury Godfrey, because his reputation had been so much exposed in that particular, and before that Court.

After his discharge from that indictment, he said, there seemed to be a probability of the call of a Parliament in some short time; and whenever he could give himself the least hopes of that, he resolved to trouble no other place: But that now he had not the least prospect of that kind; and that he had been a prisoner above three years, and yet could safely swear, he was without the knowledge to that day, for what real crimes he was committed; only he knew that the name of treason had been laid to his charge, without saying wherein the treason consisted.

He said he came, therefore, now to that Court (as the only proper place for all persons to resort to for their liberty) and he was sorry, that he was put to the great disadvantage of speaking in his own cause. But because he saw the last time he was there, that some fault seemed to be found with his Council, for urging things which seemed to relate to matters of Parliament (altho' upon a consideration of his request, there is nothing in it which does touch their jurisdiction) he had chosen rather to rely upon the Court's pardoning his defects, than put any further hardships upon those gentlemen, who had been his council, to whom he had been more beholden, than they had been to him; for that they had

undergone some unheard-of rebukes already in another place, for offering to be council with him, (though in matters of law) which he believed had never been heard of, but in his case; and he hoped, that (when all his circumstances shall have been well considered) he shall be the last Englishman that will ever have so many hardships put upon him; as will appear to be thro' every part of his case.

In the first place he said, that he had been both accused and committed, without any oath or affidavit made against him, for any crime whatever: Which had been in the case of no other Lord but himself, and he did believe of no other man.

Secondly, That there was no particular treason mentioned in the articles against him, only the word traiterously had been applied to things which were not treason, if they had been true (as was then declared by Sir William Jones, the King's Attorney) and he said, there were good store of witnesses to prove, that when it could not be maintained by argument in the House of Commons, that any of the crimes mentioned against him were treason; it was answered by one of the long robe there, (who would not have spared to have assigned the treason, had there been any) that however they ought to give the title of high treason to the articles, "for that otherwise they would dwindle to nothing when they came into the House of Peers." Now in the impeachments of the other Lords (not to meddle with the truth or falsity of their accusers) they were charged with the highest treasons in name, and upon oaths made against them.

Thirdly, When a short day was set by the Lords for his being heard; and that he appeared that day accordingly, his Council was then threatened if they did dare to plead matter of law for him: Which he said was never heard of before in any

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man's case whatsoever, nor in the worst of times.

Fourthly, He said if all the articles had been true against him, and had been Treason; he had his Majesty's Pardon (which he then shewed to the court, and demanded the benefit of it) saying, That that did pardon both his crimes (if he were guilty of any) and his imprisonment; and yet, that both that Pardon and He, had been prisoners together for above three years (of which he said he durst confidently affirm, that his was the first precedent since the conquest.)

Fifthly, He set forth, That he had not only his Majesty's pardon, but that there had been his Majesty's declaration of it in his speech to the two Houses of Parliament, together with a declaration of his innocency, and a declaration that he would give him his pardon Ten times over, if that were defective either in matter or form. And in this also he said, that his case was not only particular from any others, but that such declarations of the King's intentions to pardon, (although the formal pardons have not been obtained) have heretofore been alone a ground to procure bail at least, when the party has been the King's prisoner, and at the King's suit; which he supposed was not doubted in his case.

Sixthly, He said that he had not only been thus committed, and thus detained for above forty months, but he had been kept a prisoner, without any prosecution, for the greatest part of that time; which is another sufficient ground by the law for bail: But instead of a restraint *ad custodiam*, he said he had undergone punishments greater than the crimes alledged against him could have deserved, if they had been true; both by the length of his imprisonment, which was agreed to be a sufficient ground for bail, both by the King's council and the prisoner's, in the arguments on the grand *Habeas Corpus*, 3 Car. as also in

Melvin's case, 1 Car. and in Sir Thomas Darnell's and other cases.

By the inconvenience of his accommodations in the prison, for above two years and an half of the time.

By two most dangerous sicknesses in the prison. And

By the loss of divers of his family since his being in prison, who would some of them most certainly not have been in those places where they have been lost, had he been at liberty.

He said he was informed, That his Majesty had been again pleased to give his directions to Mr. Attorney, to give his consent a second time to his bail, and he did beg leave to ask Mr. Attorney if it were so? Whereupon Mr. Attorney did stand up, and say, that he had his Majesty's directions to give his Majesty's consent again to his Lordship's being bailed.

His Lordship did thereupon say, That this also was particular in his case; and he did believe, there was scarce a precedent in the world, of the King's prisoner, and at the King's suit, not being bailed when there hath been the King's consent to it; unless where the prisoner hath not been able to find sufficient security for his appearance to abide his trial. For that the two only justifiable grounds for the continuance of restraint by the law are, either for keeping the party from being able to do any harm by his being at liberty, (of which the King is the best Judge) or for securing the party to abide the judgment of the law, (in which the court ought to have good satisfaction) and so they might have sufficiently in his case.

He said, That the precedent would be no less strange and new against the King; than against himself, if they should not permit him to be bailed under such circumstances: For he had heard, that the law did admit of no absurdity: Now he did desire to know, how any thing could in reason

reason be more absurd on behalf of the King, than if the King's prisoner and at the King's suit, should be kept in prison by any of the King's courts, against the King's will?

Or how, said he, can any thing be more dangerous to the subject, or be a plainer failure of justice (whatever may be pretended to the contrary) than to say, That there can be any such restraint of English liberty, as cannot obtain so much as bail, but by the leave of the House of Lords? When that House can neither meet but when the King pleases, nor can never sit longer than he pleases: So that to say a man shall be a close prisoner (I mean by that a prisoner without bail, for bail itself is imprisonment in the eye of the law) till he shall be discharged by the House of Lords; is to say, that a man shall be a prisoner during the King's pleasure; which was the great grievance complained of, when the "Petition of Right" was granted, and that was thought to have fully and for ever redressed that grievance.

But if after so many heats and disputes which our ancestors have had with the crown about their liberties, this doctrine should now be admitted for law; we would seem to endeavour (as much as in us lies) to bring it to this conclusion, and be our own *Felo's de se*; "That the King shall have a way found out by ourselves, and without his seeking, how he may imprison any man, or number of men when he pleases in a Parliamentary way; and by dissolving that Parliament he may keep them as long as he pleases in a prison without remedy: But that he shall neither have power to relieve us himself by his own authority, nor by his courts of Justice." So as in short, by this doctrine, the King should only have power to hurt his subjects as much and as long as he pleases, but should not be able to do them any right if he would; and then we shall have *Magna Charta* and the "Petition of Right" re-

versed, instead of receiving that benefit by them, which the Kings of England have been so gracious as to give us, and all the learned writers upon those happy "laws of liberty" have told us, we are secure under, "at all times, and against all accidents whatever."

He then begged leave to observe to his Lordship what he found in my Lord Chief Justice Coke's Comments upon *Magna Charta*; who said, That the words *Nulli vendemus, nulli negabimus, aut differemus iustitiam vel rectum*, are spoken in the person of the King, who (in judgment of law) is always present, and repeating the said words in all his Courts of Justice.

And therefore (says he) every subject in the realm, may, "at all times," have remedy by the course of the law; and may have justice done freely, fully, and speedily, without delay; for that delay is a sort of denial.

The said Lord Coke observes farther, that those words of *Magna Charta* are fully expounded by latter statutes, viz. 20 Eliz. 3, &c. which do direct, That there shall be no delay nor hindrance of speedy justice to any man, neither by any seal, nor by any order, nor any writ whatsoever; neither from the King, nor from any other, "nor by any other cause."

Now, whatever may be said out of other considerations, he said, No man can deny, but that there is great "delay of justice" (to say no worse of it) to any man who (through no neglect of his own) can neither get trial nor bail in above three years, although his crimes were never so great. And he said, he durst be confident, that the makers of *Magna Charta* did believe they had secured all Englishmen from ever being under the possibility of such a danger; and that he made no question at all, but that by law we are so.

He said, That the said L. Coke does say in his Comment upon the 15 W. 1. (where he

he speaks of what things are bailable; and what are not; and names treason amongst the things not bailable (that is, says he) such offences shall not be replevied by the Sheriff; but all or any of these, he saith, may be bailed in the King's Bench.

And he said, he had also some of the present Judges opinions to shew, in this point, which he desired to read out of a copy of the Lords Journal, (viz. 23d of December 1678. The question being put, "Whether the Lord Treasurer should withdraw? It was carried in the negative. And on the 27th of the said December, the question being put, whether the Lord High Treasurer, (who stands impeached by the House of Commons) should be committed?" It was resolved in the negative.

And it was the same day proposed to the Judges, Whether the Judges can bail any person, in case of misprision of Treason, wherein the King's life is concerned. To which Sir William Scroggs (Lord Chief Justice of the King's Bench,) Sir Francis North (Lord Chief Justice of the Court of Common-Pleas,) Justice Windham, Justice Jones, and other of the Judges then present, gave severally their opinions; that the Court of King's Bench may take bail for High-Treason of any kind, if they see cause.

He cited the Lord Coke also in his comment on the 24 W. II. where he says, That it is a rule in law, *Quod curia Regis non debet deficere conquerentibus in justitia exhibenda*. And the reason of this is, that a failure of justice may be prevented, which,

he frequently says, is abhorred by the law. So as it appears, That the law abhors all failure of justice; and he said, That, if such failure should appear in this case, or any man's else, no order can be made to prevent failure, nor can any court justify the not giving relief against it. And he said, he should either make such failure appear, or his Lordship (meaning the Lord Chief Justice) would be able to tell him

where he might repair for justice; which both *Magna Charta* and the "Petition of Right" are understood to have provided for all times for the subjects liberty. But if his Lordship could not inform him where he might appeal forthwith for his liberty; in that case, he said, that for that reason alone, were there no other, he ought of right to be admitted to bail by that court; till he could be brought before such a judicature as had power to discharge him.

He observed also, That the Lord Coke (in a chapter on the King's Bench) did say, That that court might bail for any offence whatsoever. And that in the said chapter it was particularly observed, That there had been such care taken by the law to avoid failure of justice, even in small matters, in comparison of liberty, that he gives there an example concerning a Clerk or officer of that court: For he takes notice of what things, and against whom that court hath power to hold plea by writ. And amongst those, he takes notice against any officer or Clerk of that court; and gives the reason. Because if they should be sued in any other court, they would have the privilege of that court, which might be the cause of a failure of justice. And from this his Lordship said it did appear, that the law intended, That there should be no failure of justice by the privilege of any court, how great soever it was, for that (as was said before) the law did abhor all failure of justice. And he said, if such care had been taken against a failure in such small matters, and not in what concerned our liberties, all Englishmen ought justly to break out into the like exclamations, as the same Lord Coke and many others did, in their speeches in Parliament, and in their pleadings, viz. *Ecce verbum* the argument of the Grand Jurors, &c. but that time, where the Lord Coke breaks forth into this expression, *Shall I have*

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an estate of inheritance for life, or for years, in my land? And shall I be tenant at will for my liberty? Shall I have property in my goods by the laws; and not liberty in my person? And thereupon he tells us, That *Perspicue vera non sunt probanda*; As taking for granted, that our liberties were not to be doubted, where our properties were so secured: And the King (says he) had distributed his judicial power to courts, and to his ministers of justice; "Who are to see right done."

And he said, The Lord Coke gave the reasons of those laws which are against undue imprisonments, and that one of those is, "For the indefiniteness of time," which he says, may be "perpetual during life." And that his words are, "That it is unreasonable to think, that a man has a remedy for his horse or cattle, (if detained) and none for his body indefinitely imprisoned: For that a prison without any prefixed time is a kind of Hell."

And here his Lordship said, That he hoped the court would either allow him bail, or tell him a prefixed time, when he should be tried or discharged. He did then also quote the case of the "Duke of Suffolk," 26 H. VI. and the opinions of Prescott and Fortescue (who were eminent Judges) who said, That he ought not to be committed, (though for treason) without especial cause on the treason shewed; which had not been in his case.

He further said, That many other principal gentlemen of that Parliament had spoke most sensibly on the same subject of liberty; and amongst the rest, Sir Robert Philips had said, To have our liberties (which are the souls of our lives) taken from us, and to be peart up in goals without remedy by law; and this to be so adjudged, (for so that court had then thought fit to deny bail, for reasons which were at that time also best known to themselves) he cries out, "O improvident ancestors! O unwise

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fore-fathers! To be so curious in providing for the quiet possession of our lands, and to neglect our persons and bodies! And to let them lie in prisons! And without remedy, *durante bene placito*! If this be law, what do we talk of our liberties? This (says he) is *summa totalis* of all miseries."

He said also, That Mr. Selden did in the same Parliament argue, at a conference with the Lords, That in all cases where any right or liberty belongs to the subject, by any positive law, written or unwritten, if there were not also a remedy by law, for enjoying or regaining of this right of liberty, when it is violated or taken from him, the positive law were most vain, and to no purpose; and it were to no purpose for any man to have any right in land, liberty, or other inheritance, if there were not a known remedy, by which, in some court of ordinary justice he might recover it; and in this case of right of liberty of person, if there were not a remedy in the law for regaining it, when it is restrained, it were to no purpose to speak of laws.

Here he desired leave, to shew his Lordship what Sir Nicholas Hide (when sitting as Lord Chief Justice in that Court) did say on this occasion, viz. That the King's pleasure is, his law should take place and be executed; and for that do we sit here; and whether the commitment be by the King, or others, this court is the place where "the King doth sit in person to do right, if injury be done;" and if it appear that any man hath wrong done to him by his imprisonment, we have "power to deliver or discharge him." and he farther said, That the same Lord Chief Justice Doderidge, Jones, and Whitlocke. (answering the prisoner's council at that time) did say, the Attorney General had told them, That the King had done it; and that they (the Judges) do ever trust him in great matters. And here he took occasion to say, That he hoped that the King's consent to his bail,

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and his declaration of his Innocency, would be now as much trusted in this court.

He cited also the arguments of Mr. Calthorpe for Sir John Corbet, on the same occasion, who said, that, admit the commitment were lawful, yet when a man hath continued in prison a reasonable time, he ought to be brought to answer, and not to be continued still in prison; for that it appears by the books of our laws, that liberty is a thing so favoured by the law, that the law will not suffer the continuance of any man in prison, longer than of necessity it must.

He cited also Mr. Hackwell; who said, upon the same occasion, That the law admits not the power of detaining in prison at pleasure, when the imprisonment is but *pro custodia*; for a man, by long imprisonment, might otherwise be punished before his offence. And he mentioned an expression of his, That long imprisonment was *Vita peior morte*.

He mentioned how the Commons, at the end of the Parliament 3 Car. did desire, that the Judges might declare themselves upon the matter, why those gentlemen had not been bailed, when (by the Judges arguments) it was possible they might have been "kept prisoners all their days."

To which, he said, Whitlocke answered, First, Not so; but they did remand them, that they might better advise of the matter; and that the gentlemen, if they had pleased, might have had a new writ of *habeas corpus*; when they thought fit. And Secondly, That he had spent much time in this court, and that in such great cases, he never knew any man "bailed without the King first consulted in it." And the same he said, was then said by the rest of the Judges of that court.

Hereupon he made two remarks: First, That by this it did appear, that upon consideration, that court had altered their opinions in the case of bail, just contrary to

what their first opinions had been positive in: And Secondly, That the consulting of the King was ever necessary in such great cases. And he said, he did believe, that there was not a precedent, where the King had agreed to the bail, that ever it had been denied.

He said, that those men whom he had quoted, were men of no ordinary understanding in the laws. And as the Judges then did at last acknowledge their sense of them to be right, so he said, he hoped our laws were neither changed nor diminished, in what related to the subjects liberties; and he hoped that no order of one House, nor ordinance of both Houses, nor King alone, nor King and either House alone, could alter them: And he rested assured, that a King and Parliament would never alter them to the prejudice of liberty.

He proceeded, That if the law were still the same it was heretofore, it was plain that that law did both give a power to that court to bail for all offences whatsoever (and for treason particularly) and did require, that "the subject should at all times find remedy in it," when his liberty was restrained, by any cause whatever.

The chief reasons, he said, why such large powers had been given to that court, were principally "for avoiding all failure of justice;" and to the end, First, That the King may both have a means of giving right to his subjects at all times, according to his oath at his coronation, and according to the intent of *Magna Charta*, and the Petition of Right: And Secondly, That there might be a constant place for the subject to resort unto for "remedy at all times," whensoever he was oppressed in his liberty: And he hoped we were not now to learn a new law, that the King could neither keep his oath, nor maintain *Magna Charta*, nor the "Petition of Right," without the assistance of an "extraordinary court," which he may both chuse, whether he

he will call, or when he will call it, and how long it shall sit; which (as he said) would put all under the "King's absolute will."

He then said, he took for granted, that there would be no dispute made in this matter, but that there was "an order of the Lords" which was supposed to stand in the way. But he said, if his Lordship would give him leave, he would first say something to the order itself, and then he hoped to show his Lordship, that it stood not at all in the way, as to his request of bail; and that it should neither be interfered with in the least, nor the jurisdiction of the Lords, nor their proceedings meddled with in any kind by his being bailed; but rather owned and submitted to, by his being bailed to the Parliament.

And first for the order itself, He desired the court to observe, that it was dated the 19th of March, 1678; and worded as followeth: viz.

Dis-Mercuri 19 Martii, 1678.

THE House this day taking into consideration the report made from the Lords committee for privileges, that in pursuance of the order of the 17th instant to them directed, for considering whether petitions of appeal, which were presented to this House in the last Parliament, be still in force to be proceeded on; and for considering of the state of impeachments brought up from the House of Commons the last Parliament; and all the incidents relating therunto; upon which the Lords committees were of opinion, That in all cases of appeals, and writs of errors, they continue, and are to be proceeded on in *statu quo*, as they stood at the dissolution of the last Parliament, without beginning *de novo*. And that the dissolution of the last Parliament doth not alter the state of the impeachments brought up by the Commons in that Parliament.

Now upon this order, he observed, That it related as well to appeals and writs of error, as to impeachments; and seemed to be more fully worded to them, than to impeachments: The words *statu quo*, and without beginning *de novo* being annexed in the order more particularly to the appeals and writs of error; whereas all that was said as to the impeachments, he observed to be, that the dissolution of that last Parliament doth not alter "the state of impeachments" brought up by the Commons in that Parliament, and are not words which (strictly taken) can bind after the dissolution of any other "than that Parliament."

But he said, If the order should be expounded otherwise, yet that both the law, and the practice of the inferior courts, were undoubtedly contrary, "in the cases of appeals and writs of error." And he hoped, no court would take upon them to expound the order so, as if they were at liberty to split the order, and to judge; "which part of the same order should be binding, and which not;" for that would be to meddle, in a more extraordinary manner, with the proceedings of the Lords, than he had desired.

Now, as to "writs of error," he said, there were full resolutions of the Judges in the case, though in times of prorogations only, when a day is set for the sitting of the Lords House; and he cited the case of Heydon and Godsalve, in Croke's reports: as also the Lord Chief Justice Hale, who did not only grant execution upon a writ of error, (depending in Parliament) but did also answer the defendant's council (who would have pleaded the Lord's order in bar of the execution) that he should always pay all due respect to that Superior Court of the Lords; but that he must act according to law, that he knew, that the Lords did not intend otherwise. And of this

this Lord Chief Justice Pemberton himself, who he said had denied restitution upon an execution lately taken out, in case where a writ of error was, and is still depending in Parliament. And in "cases of appeals," he said, he was informed, that the court of chancery did not take any notice of the appeal being in Parliament after a dissolution, but did notwithstanding proceed to sequestration. And he said, that there was a late precedent in the Court of Exchequer, in the case of one Fountaine, where an appeal was brought from a decree in the Exchequer, and recognizance entered into by the said Fountaine, to abide the order of the House of Lords; and after the Parliament was dissolved, the council of the said Fountaine did insist on the said order before the Barons. That the House being possessed of Mr. Fountaine's cause, and security having been given by him to abide the order of the House, that no proceedings ought to be had in the Exchequer upon the said decree, until the matter on the appeal was determined before the Lords. Notwithstanding which, and that Mr. Fountaine produced the Lords order in the court, and produced the security allowed; yet the now Barons declared and ordered, That the decree by them made, should be proceeded on against the said Fountaine, in the court of Exchequer: And a proceeding hath been had accordingly.

By all which he observed, That the inferior courts did proceed upon "matters, forbid as much by the House of Lords," in the matters of appeals and writs of error, as it was upon impeachments; and yet that the reason was plain why they did so, for that the Parliament might proceed again upon the same appeals, and writs of errors, notwithstanding those proceedings in the inferior courts, in the interval of Parliaments; for that none of those acts of the inferior courts, does so hinder the proceedings of the superior, but that the plaintiff

in Parliament may revive the same matter there again, by *scire facias*, or by re-summors, &c. But he said, it was never heard of, that the Lords themselves did proceed again *ex officio*, without the petition of the party to revive the cause. And so he said in the case of impeachments, that the Lords would no more proceed *ex officio* upon that matter, unless they were called upon by the prosecutors; and then "their Lordships proceedings upon the impeachment, would be no more hindered by the bailing of him in the inferior court, than they were in the other cases by the executions and sequestrations, which are granted in the intervals of Parliaments," which were for the prevention both of delay and of failure of justice.

Besides, he said, If this should not be done, how could it be known, whether the prosecutors of an impeachment from the House of Commons (who are never the same men in a new Parliament) will proceed any more upon a former impeachment? For, he said it had many times fallen out otherwise; and he cited a late case of the Lord Mordaunt, who was impeach'd upon articles in one session; and having taken out a pardon during the prorogation, was never more called upon, nor never questioned upon the former impeachment; altho' the very same Parliament sat again, which had impeach'd him: And therefore, he said, That the case might more probably happen to fall out so, when a new Parliament should meet again, which would consist of new men.

He said, It was likewise to be observed, That although the transcript of the record in a writ of error might have days of continuance, yet no *superseas* is grantable; and he said, That if the Lords order be no ground for a *superseas* on a writ of error, why the lying of an impeachment should be a ground for confining a man within Tower walls all his life, he was sure must be both less

less reasonable and less just, as liberty was more valuable than property, and without which property could be of no comfort. In the next place, he observed, That if the order should be continued literally, so means that the impeachments, as well as the appeals and writs of error, (and the incidents relating to all of them) should remain in the same state they were at the dissolution of that Parliament mentioned in the said order, his case, thereupon, he said, would be quite different from any other's for that he was "not under any constraint as the dissolution of that Parliament, inop at the time when that order was made, but was then at liberty to be a sitting member of that House, and "by a vote of the House had leave to continue so; so for that (as he had already observed) the date of the order was the 10th of March, 1678, and the arrest of his commitment did appear by the return before the court to be the 16th of April following. In such case, he desired the court to take notice, that the first part of the words, *salvis* in the order (compar'd with the time when the said order was made) would be an argument to set him "as a state of liberty, as he then was; upon which point, he said, he thought he had said, he hoped he had made appear, that the order did not afford the least shelter for the hindering of his being bailed; but that on the contrary, the reasons were much stronger for the doing of them (as it related not only to him, but to the liberty of the subject in general) than for the proceedings which the inferior courts do daily practise upon appeals and writs of error (which are but for property) and are commiz'd to the same order, and therefore he said, That he hoped he should at least find the same favour in a case of liberty, which is allow'd every day in cases of bail, and would thus have said, and his law

He then said, That although it did not concern his particular case, yet for the sake of English liberty itself, he could not but say something farther upon this point: For he could not but be of opinion, that if the order had directly forbid bail, which it was far from doing, and besides, the Lords' practice had shewn their meaning to the contrary, by the bailing of a Commoner, whose crimes were declared to be greater than his; and in which case they made no *distinction* to their order; but take that to be still in the same force towards him, as towards any others who are in custody; yet he said, in that case, if such an order should be found to be against *Magna Charta*, and the fundamental right of the liberty of the subject, (as any thing must be, which does subject any man to an indefinite imprisonment) he did conceive, that of right that court ought to free any man from such a slavery; for he said, he would give no other name to it. And then he cited an argument of the Earl of Shaftsbury upon that point, which the Lord argued in that court upon an *habeas corpus*, when the court agreed they would have bailed him, had it not been in a time of war, and in the only of that Parliament. His words, he said, were, "That this court will, and ought to judge an Act of Parliament void, if it be against *Magna Charta*; and it more might it judge of an order of the House of Lords, that is put in execution to deprive any subject of his liberty." And, as he said, this could not be denied to be law; so he was confident the Earl of Shaftsbury was fill'd of the same mind, and so must every baron in England be, when they consider their own cases, they should make their liberties to be as good as theirs. It proceeded to say, That the Earl of Shaftsbury being allowed to be a knowing man, both in the law, and in the constitution of Parliament, he would be leave to quote another part of the same speech;

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viz. "That Mr. Attorney (which was then Sir William Jones) was pleased to answer the instance of one of his Lordship's council, That if a great minister should be committed, he hath the cure of a pardon, a prorogation, or a dissolution; But (says the Earl) if the case should be put, why forty members, or a greater number, may not as well be taken without any remedy of any of the King's courts? His Lordship said, That Mr. Attorney could not very easily answer. And if in this case (says he) there can be no relief, no man can foresee what may be hereafter." And in another place of the same speech he says, "He does not think it a kindness to the Lords, to make them absolute, and above the law; for so it must be, if it be adjudged, that they may commit a man to an indefinite imprisonment."

He said, He took these men whom he had named, for no small authorities in this age; And the Earl of Shaftsbury, he said, was a man still as much for the maintaining this order as ever; but that his Lordship did shew himself, at the same time, to be for English liberty: And he plainly shewed his own sense, both of this and of all orders whatever, which concerned the liberty of the subject; and declared, That he took that court to be the proper judge of all such orders.

He said, It thereby appeared how sensible that Lord was, that such cases might concern forty, as well as one, and members of either House, as well as other men; and without relief, if it should be admitted, that ordinary courts could not relieve. And the Earl of Danby said, That there was no answering of these arguments of the Earl of Shaftsbury; unless it could be denied, "That the King can impeach as well as the Commons; or that the King cannot call and dissolve Parliaments at his own will and pleasure:" For if he may (as was not to be doubted) he said, he was sure

"every man in England was in the same danger when the King pleased; and then he saw nothing whereby we had any security; but that we lived under a King who would not exercise this power over us, which we will needs put into his hands, although he does not desire it himself. As if we were so weary of our liberties, that we would be industrious in contriving how we might insensibly slide into those slaveries which our ancestors have been some ages taking pains to secure us from; and our Kings have been so gracious as to grant and confirm to us, so many times over as they have done; and which other Kings may. He concluded his observations upon that speech of the Earl of Shaftsbury's, with taking notice, That his Lordship had shew'd he was one of those Peers who would take it for no kindness to be made absolute, and above the law, by such orders of theirs being construed to extend to indefinite imprisonments.

He then repeated Sir William Jones's declaration in that Court; "That either a pardon, a prorogation, or a dissolution, was a cure against such imprisonments." And he observed thereupon, That if that doctrine were true, "That any one of those was a cure against such imprisonment, (and he could not doubt of its being good law) then certainly he ought to find relief from his imprisonment, "who had every one of those cures on his side?"

He then desired to put the Court in mind, How in the worst of times, justice had taken place so far, as "to lay aside the force of orders made in Parliaments, after the dissolutions of those Parliaments which made them; altho' it was to the prejudice of the interest of those usurpers themselves.

He cited an instance of one Sir John Stowel, who, by the articles of Exeter was to have been admitted to composition for his estate; but yet, contrary to those articles, the Parliament did afterwards order his

his estate to be sold. After the dissolution of which Parliament Sir John Stowel pleaded by his Council (which were Serjeant Maynard and Mr. Latch); That "that order was dissolved by the dissolution of that Parliament;" and that therefore the articles were again in force: And that the plea was admitted to be good, and Sir John restored to the benefit of the articles upon that plea, even by Bradshaw himself. But he said, he was sorry that he could neither have Sir William Jones, to argue those points for him which he had used against my Lord Shaftsbury; nor Serjeant Maynard, to make good "the invalidity of parliamentary orders after dissolutions." But he said, That it was not his fault, and he doubted not but he was before more just Judges than there were in those ill times; and that he hoped, "that the liberty of the subject was not now more precarious than it was in those days."

He added, That if upon such orders men could not be bailed in the interval of Parliaments, they would become grievances equal to the multiplications of treasons in former days; which have sometimes been greedily made heretofore by Parliaments in distempered times; but the Commons had never been quiet, till they could get their bear chained up, and their laws reduced to the old standard of treason again. But yet those things had been done by acts, and not by orders of Parliament.

He desired them likewise to remember, That it had been one of the chief grounds of the late war betwixt the King and his Parliament, (in which so much blood had been shed) That an ordinance of Parliament should not be held equal to an act of Parliament; and yet those were orders of both Houses. And now, said he, shall we be defending, That an order of one House only shall be equivalent to a law? And shall be in force against our greatest and most sacred laws of liberty, which have

been so confirmed to us? This, said he, I am not able to understand the reason of; nor will any man who shall give himself the least leisure to think upon it.

He then said, he desired to ask any man that then heard him, or any Commoner of England, who would but take time to consider this case, (which may be any man's in England) Whether they would be contented to invest the Lords with such an inherent power over their liberties, which they can no more be exempted from than the Peers themselves?

And he said, That the Lords had already made it appear, that they would not have any such arbitrary power placed in them, for that they had refused to pass a favourite act (which was for their own trials) only by reason of a clause which was inserted therein, "To have enacted the substance of this present order into a law."

And he said, That the House of Commons desiring that such a power might have been enacted into a law, (tho' themselves would have been the first who would have repented such a law) did sufficiently denote, "That the Commons did not think the order would be binding in law after their dissolution;" for otherwise what need was there of a law, if the order was in force after dissolution, without a law.

Upon the whole he said, He thought the distemper of that time had given more weight to the order, than any thing else; and some of their Lordships on that Bench did know, both in what an heat it had been made, and how it had been since blown upon by the Lords themselves; who he was confident would no more endure to have it construed in that sense which now seems to be put upon it, (of subjecting men to be under Indefinite Imprisonment) than they will endure themselves to be every day put in the stocks.

As he had said thus much to the order itself, so he said, he hoped to make appear
"That

"That the Court's bailing of him would not at all intrench upon the order, nor meddle with the jurisdiction of the Lords, nor their proceedings in any kind."

For that he took it for granted, that what is done by that Court, and the Courts of Chancery and Exchequer, on appeals and writs of error, was understood not to meddle at all with the jurisdiction nor proceedings of the Lords in those cases; and "that this was just the same, all being alike subject to the final determination of the Lords, whenever they pleased to call the appeal, writ of error, or impeachment, before them, and without any prejudice to their Lordships proceedings by any of those acts done by that or the other Courts in the interval of Parliaments."

Besides, he said, It had been usual to bail in that Court to the justice seat in Eyre, and yet that that Court could not proceed further.

He instanced also, That Courts allowing of the pardons of Peers, (when pleaded there) and yet that they had no power to proceed to the trial of a Peer.

And so he said, There were divers other instances of that Court's proceeding to such and such degrees of exercising their power to avoid delays, &c. where the Court had no jurisdiction to determine the matter.

Precedents he said were not to be expected, which were exactly fitted to his case, because he durst be bold to say, there never was such a case before, (when well considered in all its circumstances) nor he hoped never would be again: But he said, That therefore both the King's power and the people's liberties would be the more concerned in what resolution should be given by the Court in this case of his.

He said, There were precedents of discharging of men impeached in Parliament upon the King's writ to that Court, commanding the proceedings to cease, and they

have been discharged accordingly by that Court, without any other reason given in the writ, but because the King held the parties to be innocent and free from the crimes charged against them. As in the cases of Melton, Archbishop of York, and Gravesend Bishop of London, 7 E. 3.

He mentioned also Hugh Spencer, and Sir Thomas Berkley's being mainprised to Parliament, and yet that the latter was upon suspicion for the murder of a King, (viz.) Edward the Second.

He said, inferior Courts had bailed to Parliament about the Pope's Bull, &c. Reg. Writs, 274.

He said, A single Judge, viz. Sir Robert Atkins, had lately bailed one for treason, and another for murder; and that he did himself hear his justification of both allowed (as to the legal part) before the King and Council.

He said, That Kings had formerly abolished accusations of treason, and instanced a case of Talbot against Ormond in the time of H. VI.

And to shew how powerful the bare intention of Kings to pardon had been heretofore, he instanced the case of a man indicted of felony, who (without any Council) shewed forth a charter of pardon to the court which was discordant to the indictment, and also to his name; and yet because the Court perceived that it was the King's intention he should be pardoned, he was remanded to get a better pardon, 26 Aff. p. 46.

And he did thereupon say, That he hoped the King's intention of pardon as to him, had been sufficiently declared to the whole kingdom.

And in short, he said, That if the matter was proper for the jurisdiction of that Court, before it was in Parliament; its having been there, did not take away the jurisdiction from a competent Court, when the extraordinary jurisdiction fails: which was not to be supposed could lay all other

other jurisdictions asleep, when itself was not in being; and especially when that competent court should do nothing in contradiction to the proceedings of the extraordinary court, as he hoped he had made appear, that that court would not do, by the bailing of him.

Whereas on the contrary, he said it was most evident, that "justice did fail in the highest concern," (which is that of men's liberties) unless he could be inform'd when and where he might certainly be either tried or discharged; for that (as he had said before) it was agreed both by the council for the King, and the council for the prisoners, in the arguments on the grand *Habeas Corpus*, that indefinite imprisonment was held to be perpetual imprisonment, "which the law did admit in no case where the imprisonment was only *ad custodiam*." And although his had been intended but *ad custodiam*, yet it could not be denied, but "it had already been *ad gravem penam*, and without any particular cause yet shewed for which he ought not to be bailed by law."

He then said, that Littleton had declared in his arguments, 5 Car. That if treason in general be held to be a sufficient return, yet that the King's bench might bail: And the said Littleton, and the King's Attorney, in their arguments (one for the King, and the other for Mr. Selden) did agree, "that where the party could not avoid the judgment of the law, nor that there was no danger by his being at liberty, he ought to be bailed after long imprisonment; and at that time, six months was taken to be long imprisonment."

He said he had read a passage in the Lord Coke's institutes, where he spoke of such imprisonments as he compared to the imprisonment of St. Paul, by the Centurion, who first put him in chains, and then enquired who he was, and what he had done.

He said he would not compare his case to that; but that there was so much of re-

semblance in it, that he had been in chains, or what was there meant by chains (which was a prison) for above three years, on a pretence of treason, without being told to that day what kind of treason he had committed; which had been done in nobody's case but his, and by so much the greater was his hardship.

He had also both been accused and committed without any oath made against him.

When a day had been appointed for his hearing, his council had been forbid to plead matter of law for him.

It had been acknowledged, that there was no treason contained in any of the articles against him, if they were all true.

And if they had been true, and had amounted to treason, he had there shewed the King's pardon, which did release both the crimes and the imprisonment.

That besides that pardon, he had had his Majesty's declaration in full Parliament, both of his innocence, and that he would grant him his pardon ten times over if this were defective.

That he had now had his Majesty's consent to his bail; a second time, declared so that court by the Attorney-General, by the King's direction.

That in all these foregoing particulars, his case was singular, and different from all others, who are or have been made prisoners since the beginning of the late plot, or (as he believed) at any other time.

Besides these things, which are peculiar to his own case, he said that there was also what was common to other cases, as well as his.

The length of his imprisonment, which had been above 40 months.

The being confined so long under pretence (as he conceived) of an order of the House of Lords, "which neither directs nor implies any thing to forbid bail." But in that also he had what was particular to

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himself) which he had already said, and desired leave to repeat, because it would deserve their consideration,) viz. "That he was at liberty, and had leave to be a sitting member in the House of Lords, at the time when that order did declare that the impeachments,, appeals, &c. and the incidents belonging to them should stand *in statu quo*; so that (as is already observed) the *status quo* (as to him) he again said, was to put him into a state of liberty."

Lastly, he said, That he had no prospect now when any Parliament would sit, and by the examples of past Parliaments he might reasonably fear, whether, when they did meet, they might sit so long as to give him relief; for that his petition had been read the first day that the last Parliament entered upon any public business; or whether greater business of the kingdom might not (as it had done already) so take up their time, as not to give them leisure to consider the case of a single person: And since this had already fallen out to be his misfortune in three Parliaments successively, he took it to be but too plain "a demonstration of his lying under an indefinite imprisonment, unless he should find relief in that court, "for that there was no other to appeal unto."

He said, That in those great and eminent cases which fell out 3 & 5 Car. about the bailing of persons committed to indefinite imprisonment, the Judges were then very positive against their bail, and yet changed those opinions afterwards; and so he hoped that court might do upon a due consideration of his case and circumstances: or else he hoped that his Lordship would convince him, "that his imprisonment was indefinite," by letting him know at what prefixed time, and where he might resort for remedy, which the law does, without question, allow to all men, and at all times.

He said, He was a very reasonable man, and when he was convinced by reason (upon which he was sure all laws were founded) he could be content to suffer still, though his imprisonment had been so long already; for that however he may have been misrepresented for an arbitrary man, he would rather perish in his prison, than have any thing done for him which the law would not warrant; but, on the other side, he should be sorry, that his case should be made a precedent against law, and against English liberty, which he was sure it would be, if he should be continued to lye "under an indefinite imprisonment without being bailed;" and he said he was not ashamed to say, in the behalf of all Englishmen's liberties, as well as of his own case; that it was a case which did concern every man to take care of in the consequences of it, and which did cry loudly for relief.

He then told the court, That he had troubled them long, but that he hoped it would be excused in a case of that moment: And in the first place he said, he hoped it was plain, that that court had it in their power to grant him relief if they pleased.

That it was as plain, that there was nothing in the Lords order against it, and that the practice of the Lords had been otherwise, even in the behalf of Commonsers.

That it was apparent, that both that court and the courts of Chancery and Exchequer, "do relieve upon appeals and writs of error, which are in the same order with the impeachments, and yet do in no sort meddle with the judicature or proceedings of the House of Lords."

That it was manifest, that let the order be construed as any man pleases, yet that bailing could be no sort of judging of any proceedings in the Superior Courts: "but would leave the judgment entirely to the Parliament, and would continue him a prisoner in law," bound to appear before that extraordinary court, whenever his Majesty should

should be pleased to call it; and he said, it was more evident, that otherwise he was an indefinite prisoner, and at the King's will only for his liberty, the consequences of which every man ought to lay to his heart, with a dread of it, whenever they should live under a Prince that might not be so merciful as our present King; and he hoped the court would duly consider it.

Besides all this, he said, He durst confidently affirm, "that there was not a precedent since the conquest, of any man's being refused bail under such circumstances as his were." Whereas he said, the detaining of men under long imprisonment, ought either to have "express law for it, or a good number of precedents, and in good times to justify it," and not any single instance or two (if they could be produced) which he thought they could not.

And he hoped that precedent which he had already mentioned on his Majesty's behalf, would be very well considered, which was, how the King's court should keep the King's prisoner, and as the King's suit, in the King's prison, with the King's pardon, and against the King's will, twice declared in that court by his Attorney-General.

He said, he should conclude with letting his Lordship know, that as the King himself had sufficiently declared that there was no danger in the letting him have his liberty, so he had such bail to offer to his Lordship as would sufficiently satisfy the world, that he should be forthcoming to answer when and where that court should appoint; and then, he hoped, the two chief grounds for detension in a prison (*viz.* The danger of a man's having his liberty, and the danger of his not appearing to abide his trial) would be fully answered.

And it might not seem too great a vanity to say (although the true reasons does take away the vanity of it, because it would not be for his, but for their own sakes, as what may happen to be their own cases) he

said, he doth believe, he could have the major part of the House of Lords to be his bail in this case, and some of those very Lords who were for the making of this order, although not in that sense which would seem to be put upon it. Inasmuch that there would be no more to fear in the granting him bail, than, he hoped, there was either reason or justice to deny it. And he doubted not, but he was there before very just judges, who would duly consider what he had said.

The Lord Chief Justice then speaking, did say, That the Earl of Danby had seemed to reflect upon the court, as if they had denied him justice in not hearing his council.

Then the Earl of Danby desired leave to interrupt his Lordship, saying, That his Lordship had mistaken him, for that he had said no such thing of that court, nor did he mean of that court; but said, It was very well known, that his council had been forbid to plead for him in another place; which was then acknowledged by Justice Jones to be very true.

The Lord Chief Justice then proceeded, and said, That for his Lordship's saying they needed not to fear, because, he did believe, the greatest part of the Lords would be his bail; That it was not the fear of another court that had any kind of influence upon them, or that they should do such things as they feared to be called to an account for; but that they were to govern themselves by the doing of justice.

That they had heard his Lordship with a great deal of patience; and that he had said many material things, and with much acuteness; and that they were not senseless of the hardship of his Lordship's case, and of the greatness of his sufferings.

That they were likewise sensible of the King's desires, that his Lordship should have no longer imprisonment than the law requires. And he confessed, "That the

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King had done as much as lay in his power."

That it was not denied, because that court could not bail for treason; "for that they had a power to bail in all cases whatsoever," if the court saw cause. Neither would the indictment which was found against him about Sir Edmund-bury Godfrey have hindred; "nor was it the order of the House of Lords which hindred them;" but that they were to act there according to law; and he prayed his Lordship to consider that they could not relieve him according to law.

That he did agree to some things mentioned by his Lordship; and that it was a very hard case he should lie so long in prison: But here was the misery, they could only compassionate him; for that his Lordship was imprisoned by an higher hand, and where they had no power to intermeddle.

He instanced in indictments for treasons, and several other great crimes, in which they could bail men; but in this case, "the supreme jurisdiction of the nation had laid their hands upon it, which was attended by the House of Commons with an impeachment."

Whether their Lordships had cause, or not cause, to commit his Lordship, they could not inspect; but that they ought to believe that his Lordship was justly committed; and that their Lordships, in their mature deliberation, would do nothing unjustly.

He said, That they had a jurisdiction over all the courts in the kingdom, (that only excepted.) "And as it would be very incongruous for an inferior court to bail whom they had committed, or to call their processes in question; so would it be in like manner for them to do in this case," because the Lords exceed their jurisdiction, and were above them. He said also, That the opinion of all the Judges in England

had been taken therein, and had delivered their opinions, that he could not be bailed: And that the truth was, his Lordship was imprisoned by too high a court for them to bail him; for that his Lordship was not indefinitely imprisoned, as he had alledged: "For whenever his Majesty is pleased to call a Parliament, his Lordship would have remedy."

"That the King has power to do it when he pleases," and, for his people's good, no doubt he will, when he sees fit: But at some time the circumstances of state differ from other times; and that it may not for some space of time be thought convenient; and though this may prove mischievous to a single person, or to two or three persons, yet such things must be endured for the good of the public. He said also, "That if that court should commit a man for high treason, and the King should adjourn them from time to time, that man could not be bailed until they sat again." So that he must confess; (as his Lordship had said) that as this case did happen, he was under a "temporary indefinite imprisonment."

He concluded, with telling his Lordship, "That he must be contented to wait the King's pleasure when he would call a Parliament."

That, for his part, he was before of opinion; that they could not bail his Lordship, and he was so still.

The Earl of Danby to all this answered, that he must confess, his ears did tingle to hear his Lordship say, "That the King had done as much as lay in his power," when his Majesty is bound both by his coronation oath, and by the laws, to see right done at all times to his subjects; and he desired to know, "Whether this was not the King's court, and whether he had not deputed a power to them to see right done to all accordingly?"

He said also, That he was now under greater amazement than before; since his Lordship

Lordship had both granted, "That this court could bail any treason, and that the order of the House of Lords did not hinder it; which, till now, he confessed, he had taken to be the only obstruction to his liberty.

That he had hoped, he had satisfied his Lordship, that although he was imprisoned by an higher hand, yet "that the bailing of him did not intermeddle with the jurisdiction of that higher judicature," and he had yet heard nothing to shew him that it did.

That for what his Lordship had said of the opinion of all the Judges in England, being taken in his case, he must needs inform his Lordship, That that was a mistake; for that the opinion of the Judges had never been asked in this particular case, saving once, upon petitioning the King for liberty to go to his country house at Wimbledon, with a guard, or otherwise, as his Majesty should think fit; which petition was referred by his Majesty to the Judges: And they (according to their wonted prudence and caution) did only report, That they thought his Majesty could not legally grant the petitioner's request.

That whereas his Lordship said, That he was "not indefinitely imprisoned, for that whenever his Majesty is pleased to call a Parliament, he will have remedy; and that he must be content to await the King's pleasure when he will call a Parliament;" he took those to be fuller arguments, than any himself had made, to prove, "That his imprisonment was indefinite, and at the King's pleasure; so that he was now more fully confirmed than ever to be of that opinion, and wished that every man, that heard that doctrine given for law, might fully consider the consequences of it."

He said further, That his Lordship had mistaken him, in thinking that he had said

he was under a "temporary indefinite imprisonment;" for that he had said he was under an "absolute indefinite imprisonment: And that his Lordship had rather proved him to be so, than shewed any thing to the contrary; nor did he know what "temporary indefinite" did mean.

The Lord Chief Justice then said, That he was not a Judge at that time when the Judges opinions were asked; but desired his brother Jones to relate how it was.

Mr. Justice Jones then said, That he remembered the case had been put to the Judges, Whether the Lords in the Tower might be bailed, and that it was then the opinion of the Judges that they might not: But he said, he did think the Earl of Danby was not particularly concerned in the question at that time, but that it related to the Popish Lords only, and that there was much difference betwixt his Lordship's case and theirs; besides, he did think, that was at a time when there was a day appointed for the meeting of a Parliament.

The Earl of Danby then said, That the question which was put at that time to the Judges, about the Popish Lords, did not concern his case at all; for that it differed from theirs in very many particulars, which he had already mentioned, viz. Of no oath against him; No special treason alledged, &c. which he was loth to trouble them with repeating again; but he supposed, that the then opinion of the Judges ought not to be made any argument against him.

He said also, That the Lord Chief Justice had argued very strongly for him; for that it was true, "That the King might call a Parliament when he pleased; but if therefore a man must stay in prison till the King did please to do so, he may (by that very argument) lie there all his life-time, if the King pleases;" which confirms what he had been a great part of this time labouring to prove: And he said, he must confess,

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confess, he did expect to have heard stronger and more powerful arguments to have convinced him, that he was in the wrong in what he had said; but that now he was more encouraged than before, not to give over a cause which did so much concern every man in England.

The Lord Chief Justice then said, That his Lordship was mistaken in believing that that court did keep him in prison; for that he was not kept in prison by them, but by a superior court, which was too big for them to meddle with, or to examine what they did.

To this his Lordship answered, That he had wrong done him, which must be done by somebody, and that it was a maxim of the law, "That the King could do no man wrong," (being advised by his courts); besides, that his Majesty had twice shewed his consent in that court to have him bailed. Neither could he say, that the Lords did him wrong, because there was nothing in their order to hinder his being bailed, (besides their own practice to the contrary); and it seemed now to be said, that it was by the law, and not by the order, that he was kept a prisoner. He said, he would not say, that that court did keep him a prisoner, but by some body he was sure he was kept prisoner; but perhaps it might be by the stars, since he could not find who it was upon earth that did it.

He concluded, that if he were legally imprisoned, yet by *Magna Charta* and the "Petition of Right, &c." it was impossible for an Englishman to be without some certain prospect of relief in a reasonable time, they being to have justice done them by the law at all times, and without delay; and that he was now in the King's proper court for justice; wherefore as his Lordship had given his own opinion, so he did desire that every Judge would be pleased to deliver theirs severally.

Then Mr. Justice Jones said, That he was not ready to give any present opinion,

there having been so much, and some things so materially said by his Lordship: But that for his better satisfaction, he did desire to ask his Lordship a question, in a point which did much stick with him, and would go a great way in guiding his judgment; and he was confident that his Lordship was as able to give him an answer to it, as any man; which was this, His Lordship (he said) had been charged with a treason by an impeachment, and had pleaded a pardon to the impeachment before the Lords; "He said he took that plea to be a tacit confession of guilt in law, (though the party were never so innocent) and then it had been "a tacit pleading of guilty; insomuch that he did believe, there could be no admittance of any second plea; and if so, he did confess, he did not see how that court could then have any thing to do with his Lordship in that case; but it was what he had not well considered (though at present he took the law to be so) and he did desire to hear what his Lordship did say to that?"

His Lordship answered, That he gave him great thanks for letting him clear any objections, and giving him liberty to answer them as well as he could. That this indeed was a question of law, which he was but little versed in, but that he was at present able to say, That he had read the opinions of some great men of the law, to be otherwise; and instanced what the Lord Coke had said upon the case of Gravesend, Bishop of London, 7 E. 3. who did get a writ of discharge to the King's-Bench, and did not take a pardon; upon which he observed the said Lord Coke to have said, "That it may be he thought that the taking of a pardon would have implied a confession of the fault, and therefore went a new way; but that was a mistake, for that no man that is wise and well-advised, will refuse God and the King's pardon, how often soever he may have it; for there is no man but offendeth

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God and the King almost every day, and the pardon is the safest and surest way."

And though at present, he said, he was not provided of precedents in the case, yet he remembered there was a case of a coiner tried at Durham upon a pardon, where the pardon proved defective, and yet he was allowed to plead over.

And he told them, That the same question had been moved in the House of Lords upon his own case, where divers Lords had declared themselves, "That they hoped it should never pass for law amongst them, that a man should not have one plea for his life; and gave for reason, that if a pardon was pleaded, and not admitted to be good, then the prisoner had depended upon what he thought had been a good plea, but was adjudged by the court not to be so, and then if he should not be admitted to plead over, it would be to ensnare a man's life, without giving him any plea at all for it." And he concluded, saying, He thought that this question was rather going into the merits of his cause, than to what he only demanded, which was but bail.

Mr. Justice Dolben then said, he must acknowledge there was a vast difference betwixt his Lordship's case, and the case of the Popish Lords in the Tower, in many material particulars, which his Lordship had mentioned; "and he must confess that he thought it one of the hardest cases in England." He said also, that he could not but differ from what his brother Jones had said, as to the not having liberty to plead over; for that he was of opinion his Lordship ought not to be debarred from having a second plea, if the pardon should be over-ruled; and (if I did not mistake him) he cited the instance of one Hetley's case (or such a name) and he said, that his Lordship had said so many things of great consequence, that he thought it did very well deserve further consideration; but if

he should be put to give any present answer, he must then say (as my Lord Chief Justice had done) that he thought they could not bail his Lordship; but he thought it might well deserve further consideration.

Mr. Justice Raymond then said, That his Lordship's case had so many weighty circumstances in it, as ought to make it to be very well considered, before any opinion could be delivered in it. That for what had been said by his brother Jones, about the pleading over or not, he thought that did not properly lie before them in that place; that his Lordship had "said some things, to which he thought full answers might be given;" but that he had also said "some things, to which he thought it would not be so easy to answer." That for his part, he thought it was a case which might well deserve the consideration of more of the Judges, betwixt this and the next term; and that he must acknowledge he must further consider it, before he would presume to give any opinion at all upon it.

A council at the bar then moved, That a rule of court might be made to bring his Lordship thither again, the first day of the next term.

The Lord Chief Justice seemed displeased with the forwardness of that council; and the Earl of Danby excused it, saying, It was not moved by his desire or directions; but said, That was all alike to him, whether there were any rule of court or no; for that they were like to be troubled with him again, and that he should not easily give over a cause, wherein he took the liberty of the subject in general to be as deeply concerned as himself, and wherein he had found so little to be said against him, that he did believe he should be as troublesome to them as ever Judge Jenkins had been heretofore in the defence of English liberty.

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The Lord Chief Justice then standing up, said, My Lord, your Lordship must for the present be content to be remanded; and speaking to the Lieutenant of the Tower's officer, told him, he must take back his prisoner.

And then the Lord Chief Justice immediately left the court.

The Trial of the LORD CONWALLIS.

AFTER my Lord High Steward was ascended to the high chair of state, and sat down therein, the commission was delivered by the Clerk of the Crown in the Chancery, to my Lord, on his knees, who delivered it to Sir Thomas Fanshaw, Clerk of the Crown in the King's-Bench Office, and he received it kneeling.

Then proclamation was made by the Serjeant at Arms, who was Crier for the day.

Serjeant. O yes! O yes! O yes! My Lord High Steward of England strictly chargeth and commandeth all manner of persons here present, upon pain of imprisonment, to keep silence and give ear to his Majesty's commission, to my Lord High Steward of England, to his Grace directed.

The Clerk of the Crown with his face to my Lord High Steward, reads it thus:

Clerk of the Crown. Charles Rex Carolus Secundus, &c.

All which time my Lord and the Peers stood up bare.

Serjeant. God save the King.

Cl. of Cr. Make proclamation.

Serjeant. O yes! The King at Arms, and the Usher of the Black Rod on their knees deliver the white staff to my Lord, who re-delivered it to the Usher of the Black Rod, who held it up all the time before him.

Cl. of Cr. Make proclamation.

Serjeant. O yes! My Lord High Steward of England strictly chargeth and commandeth all Justices and Commissioners, and all and every person and persons to whom any writ or precept have been directed for the certifying of any indictment, or of any other record before my Lord High Steward of England, to certify and bring the same immediately, according to the tenor of the said writs and precepts unto them, or any of them directed, on pain and peril as shall fall thereon.

The Lord Chief Justice of the King's-Bench returned his *Certiorari*, and the record of the indictment by the Grand Jury of Middlesex, which was read by the Clerk of the Crown, *in hæc verba*.

Cl. of Cr. Virtute, &c.

L. H. Stew. Call the Constable of the Tower to return his precept and his prisoner.

Cl. of Cr. Make proclamation.

Serjeant. O yes! Constable of the Tower of London, return the precept to thee directed, and bring forth the prisoner Charles Lord Conwallis, on pain and peril as will fall thereon.

The Lord Lieutenant of the Tower brought in the prisoner on his left hand, with the axe before him, born by the Deputy Lieutenant, which he held with the edge

edge from him, and returned his precept *in hac verba*.

Cl. of Cr. Virtute, &c.

L. H. St. Call the Serjeant at Arms to return his precept.

Cl. of Cr. Make proclamation.

Serjeant. O yes! Roger Harfnet, Esq. Serjeant at Arms to our Sovereign Lord the King, return the precept to thee directed, with the names of all the Lords and Noblemen of this realm, Peers of Charles Lord Cornwallis, by thee summoned, to be heard this day, on pain and peril as will fall thereon.

He delivered his precept returned with a schedule annexed thus;

Cl. of Cr. Virtute, &c. Make proclamation.

Serjeant. O yes! All Marquisses, Earls, Viscounts, and Barons of this realm of England, Peers of Charles Lord Cornwallis, which by commandment of the Lord High Steward of England, are summoned to appear this day, and to be present in court, and to answer to your names, as you are called, every one upon pain and peril as will fall thereon.

Then the panel was called over, the number of Peers summoned were thirty-five, in order as followeth.

Thomas Earl of Danby, Lord High Treasurer of England, &c.

All that appeared, answered to the call, standing up bare.

Then my Lord High Steward made a speech to the prisoner at the bar thus:

Lord High Steward. My Lord Cornwallis, The violation of the King's peace, in the chief sanctuary of it, his own royal palace, and in so high a manner, as by the death of one of his subjects, is a matter that must be accounted for. And that it may be so, it hath pleased the King to command this high and honourable court to assemble, in order to a strict and impartial enquiry.

The wisdom of the law hath therefore stiled it the King's Peace, because it is his authority that commands it, it is his justice that secures it, it is he on whom men do rely for the safety of their liberties, and their lives; in him they trust that a severe account shall be taken of all the violences and injuries that are offered to them, and they that trust in the King can never be deceived.

It is your Lordship's great unhappiness at this time to stand prisoner at the bar, under the weight of no less a charge than an indictment of murder; and it is not to be wondered at, if so great a misfortune as this be attended with some kind of confusion of face; when a man sees himself become a spectacle of misery in so great a presence, and before so noble, and so illustrious an assembly: But be not yet dismayed, my Lord, for all this, let not the fears and terrors of justice so amaze and surprise you, so as to betray those succours that your reason would afford you, or to disarm you of those helps which good discretion may administer, and which are now extremely necessary.

It is indeed a dreadful thing to fall into the hands of justice, where the law is the rule, and a severe and inflexible measure both of life and death. But yet it ought to be some comfort to your Lordship, that you are now to be tried by my Lords your Peers, and that now you see the scales of justice are held by such noble hands, you may be confident they will put into them all the grains of allowance, either justice or honour will bear.

Hearken therefore to your indictment with quietness and attention, observe what the witnesses say against you without interruption; and reserve what you have to say for yourself, till it shall come to your turn to make your defence, of which I shall be sure to give you notice; and when the time comes, assure yourself you shall be

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heard,

heard, not only with patience, but with candor too.

And then what judgment soever my Lords will give you, yourself will (and all the world) be forced to acknowledge the justice and equity of their judgment, and the righteousness of all their Lordships proceedings.

Read the Indictment.

Cl. of Cr. Charles Lord Conwallis, Thou standest indicted in the county of Middlesex, by the name of, &c. How sayest thou Charles Lord Conwallis, art thou guilty of this felony and murder whereof thou standest indicted, or not guilty?

Lord Conw. Not Guilty.

Cl. of Cr. How wilt thou be tried?

Ld Conw. By God and my Peers.

Then my Lord High Steward addressed himself to the Lords thus:

L. H. Stew. My Lords, your Lordships have here a Member before you of your noble body, exposed to the shame of a public arraignment, and (which to a man of honour is much less) to the hazard, both of his life and estate; all that he hath and ever hopes to have, his wealth, his fame, his posterity. All that is valuable to him in this world entirely depends on your Lordships judicature, who are now his Peers, and on whom he doth freely put himself.

My Lords, The privilege of this kind of tryal and judicature is a part of the true greatness of the English Nobility: It is an eminent and an illustrious privilege. It is a solid point of honour and dignity. It is a privilege that no neighbour nation ever had, and a privilege this nation never was without.

It not a privilege created by the great charter, but confest and acknowledged by it. They look but a little way that find this in the steps of the Norman conquest, for it is to be found even in the footsteps of the Saxon monarchy, when Godwin, Earl of Kent was tried by Earls and Barons.

And it is no improbable conjecture of theirs, who do think the wisdom of this constitution was taken from that law amongst the Romans, whereby it was made unlawful for any man to sit upon a Senator, that was not himself of the same order; a privilege, that (as learned civilians tell us) continued with them during the reign of many of the Roman Emperors. But, my Lords, as this is a privilege as ancient as monarchy, so we have found by many old experiences, that it cannot be taken away without the dissolution of that government: Therefore this is one of those many ties by which the interest of the nobility, as well as their duty, have obliged them to the service of the King.

In the exercise of this privilege at this time; I know your Lordships will weigh the fact with all the circumstances, whereby it is to receive its true and its proper doom. Your Lordships are too just, to let pity make any abatement for the crime, and too wise to let rhetoric make any improvement of it: This only will be necessary to be observed by all your Lordships, that the fouler the crime is, the clearer and the plainer ought the proof of it to be. There is no other good reason can be given, why the law refuseth to allow the prisoner at the Bar Council in matter of fact, when his life is concerned, but only this, because the evidence by which he is condemned, ought to be so very evident and so plain, that all the Council in the world should not be able to answer it: Upon this ground it is, that the law hath trusted your Lordships with the trial of your fellow Peers; no trust can be more nobly lodged, nor no judicature had ever more true submission made to it: Therefore it would be in me some want of respect to this august and noble assembly, should I go about to put your Lordships in mind of your duty: No doubt you will observe the evidence carefully, weigh it diligently, and when that

that is done, it is impossible but the judgment you will give, must be right and honourable, and worthy of so wise and so great a body; therefore I will not detain your Lordships any longer, from hearing the evidence that is ready to be offered unto you.

Cl. Cr. Make proclamation.

Serj. O yes! if any will give evidence for our Sovereign Lord the King, against Charles Lord Cornwallis, prisoner at the bar, let him come forth, and he shall be heard; for the prisoner stands at the bar upon his deliverance.

The indictment was again read to the Peers.

Then Serjeant Maynard, the Serjeant at Law, began thus:

May it please your Grace, my Lord High Steward of England and this great and noble Assembly; The prisoner at the bar, Charles Lord Cornwallis, standeth indicted of a great crime, that he together with Charles Gerrard and Edward Bourne, not having in his heart the fear of God, but instigated by the suggestions of the devil, the 18th of May last, did feloniously and of his malice aforethought, assault one Robert Clerk in Whitehall, and that Mr. Gerrard took him up in his arms, flung him down, and broke his neck, of which he instantly died; to this he hath pleaded not guilty: It lies upon us who are council for the King, in this case to prosecute it, and prove it to you.

Sir William Jones, the King's Attorney-General, then spake thus:

Mr. Attorney Gen. May it please your Grace, my Lord High Steward of England, and my Lords summoned for the trial of the prisoner at the bar. This noble Lord stands indicted for murder: an offence, my Lord, which is the first and greatest that is forbidden by the second table, and an offence of that nature, that the law of God hath by a most peremptory sentence condemned and decreed, that who so

sheddeh man's blood, by man shall his blood be shed. Whether this noble Lord be guilty of it, remains upon your Lordships to try, and I shall very shortly state the matter of fact, which we shall prove, and then let the evidence be offered to you. We do not pretend, my Lords neither doth the indictment lay it, that this great offence was committed by the hand of my Lord Cornwallis.

For I know your Lordships have observed the indictment, by which it is alleged, that the hand of Mr. Gerrard did the fact: But, my Lords, if we shall make it out that my Lord Cornwallis did concur to this act, and had in himself at that time an intent to be a murderer; then it will be declared by his Grace my Lord High Steward, and my Lords the Judges, that though his hand did it not, yet he is equally guilty as if it had.

Now, to make out the charge against him, our evidence will be shortly thus:

On the 18th of May last, early in the morning, between the hours of one or two, came down two gentlemen with three footmen behind them, out of the gallery at Whitehall, by the stairs that lead down to the park: I call them two gentlemen, because it was not then discovered who they were, or of what quality; but your Lordships will perceive, by the course of the evidence, they were my Lord Cornwallis and Mr. Gerrard, coming down at that unreasonable hour; the first question they asked the centinel (who watched at the foot of the stairs), was the hour of the night; and from him had account that it was so much.

The prisoner and Mr. Gerrard were somewhat distempered with drink, and made him a reply, that he lyed, with great oaths accompanying it. At that time they did no more but go by him into the Park, where, after they had continued by the space of an hour, back they returned to the

the stairs, and the centinel demanding, according to his duty, who came there? They answered him in very obscene and uncivil language, and threatened they would kill the centinel, who only did his duty in enquiring who came by him at that time of night. And we shall make it appear, they were in a kind of contention among themselves who should kill him; for, as I am informed (I know if it be not proved, your Lordships will observe it) one desired, "Pray let me kill him;" and the other desired, "Pray let me kill him;" and threatened no less than to run him through.

My Lords, the centinel being of a good resolution, was not affrighted from his place, but kept them off; and when they saw they could not win upon the centinel that way, one of them delivered away his sword, which he held in his hand not drawn, and then was pleased to come to the centinel, and desired to kiss him, and swore he would do that: but that the centinel did equally refuse; and then they did use the same threatnings again, and seemed to be in a contention who should run him through. My Lords, after some time, being now come to the top of the stairs, and there staying, it happened there came to the stair-foot two youths, and these young men, were, it seems, going to bed to their lodging, which was very near, and did make it their request to the centinel (one of them did) to call him up very early the next morning, because he was to go of a message out of the town. My Lord Conwallis and Mr. Gerrard remaining on the top of the stair-case, being (as we said) in disorder (which is the strength of the King's evidence, if proved) both of them said, before they went thence they would kill some or other, which evidence will go a great way to shew the concern that noble Lord the prisoner at the bar had in the business.

It happened as these boys were making their request to the centinel, my Lord and Mr. Gerrard took notice of it, and seemed to be concerned that they should command the King's soldiers, and bid the centinel shoot him, who told them he conceived the boy had done him no wrong in asking a civil kindness from him; they again called to shoot him, and they would bare him out; which he still refused to do, finding no reason for it: then one of the two took occasion to swear a great oath, he would kick his arse to hell; to which the boy that asked the centinel made some reply; wherein the word "arse" was repeated: now (whether they understood it as an interrogation, "Why kick my arse to hell?" as he intended it; or in a worse sense, "Kiss my arse") one of the gentlemen in a rage came running down the stairs, and that boy that in truth spoke the word ran away, and the other poor innocent boy, trusting in his own innocence, remained there, until the person came to him, and did on his knees (in a manner) desire not to be mistaken, he was not the person that used any ill words, and cried out, "O my Lord it was not I, indeed my Lord it was not I;" but such, at that time, was the intemperance and wrath of the person, who in such a fury descending the stairs, that (whether with the blow or the fall) the boy received his death. We find by our information of the evidence, that he who did the thing was, in truth, Mr. Gerrard, who is not yet taken; but whether my Lord, the prisoner at the bar, did not concur in it, and had not an intention to kill somebody, is the question left for your Grace and these noble Peers to decide? This is the nature of the fact; only I desire to observe, that it is true here was some distance between the place where my Lord Conwallis stood, and the place where the boy was killed. Of what consequence that may be, I leave to your Grace's and these noble Lords consideration.

sideration : It was the distance of the stairs, but, I think, as every one knows, they are not so many, but what is done below may be easily seen at the top.

We shall now, without detaining your Lordships any longer, call the witnesses, and prove what hath been opened : The soldier proved the fact, as it was opened by Mr. Attorney General, except that part about both swearing they would kill one or other, which passage was heard but by one of them, and was spoken but by one of the gentlemen.

They could not swear, who were the persons, because of the darkness of the time.

The boy that was the companion of him that was slain, and that used the words that caused the person to come down, swore them to be a repetition only, by way of interrogation, "why kick my arse to hell?"

Then Mr. Attorney desired to call my Lord Conwallis's own two footmen, who had been indicted and acquitted at the King's bench-bar.

Lord High Steward. My Lords the Judges, is there any question, whether a person acquitted of an offence be a good witness against another charged with the same offence?

Judges. None at all ; when he is acquitted he ought to be admitted.

Then the copy of the acquittal (proved by a clerk in the crown office) was read, and then were sworn ; who fixed it upon the person of Mr. Gerrard, and swore that my Lord Conwallis was all the while upon the top of the stairs, but after the fact committed, hastened away for fear of being knocked down by the soldiers : And there ended the King's evidence.

L. H. St. Now, my Lord, is the time come for your defence. You hear what is charg'd on you, Pray speak what you have to say for yourself.

Lord Conwallis. Then the prisoner at the bar confessed himself to have been in the

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company that night when this accident happened, which he hoped would be a warning to him to shun such disorders hereafter, but that he had no evil intention, and but one witness swore that both of them would have killed the centinel, that he was not conscious to himself to have had a hand in it, and therefore withdrew not himself, but yielded himself to the coroner the next day, (which he proved by the coroner himself) and did therefore, in trust of his innocence, submit himself to the judgment of his Grace and his Peers.

Which being done, Sir Francis Winnington, the King's Solicitor General, summed up the evidence in this manner :

May it please your Grace, my Lord High Steward of England, and my noble Lords the Peers of the prisoner at the bar. According to the duty of my place I am to repeat the King's evidence, and state it to your Grace and these noble Lords, and submit it to your great judgments, how far it will go for the proof of this crime ; wherein I shall observe the duty of all honest men, which is to do nothing either to wrest any thing in disadvantage of the prisoner out of the King's evidence, to go farther than it ought ; nor shall omit any thing that shall require your Grace and the noble Lords justice ; for we come to seek out the truth, and we question not but by this honourable trial it will be brought to light. But I beseech your favour, to take notice, in the first place, what crime this noble Lord stands accused of, and it is for murder ; wherein our law takes notice, that murder is where a man unlawfully kills another under the King's peace, with malice forethought. Now that here is a murder committed, I dare with all humility aver. By whom ? That is the question : For this Robert Clerk, the person killed, doth appear, by the course of the evidence, to have been doing his duty, attending the place his employment required ; gave no offence

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offence to any whatsoever,; but when the person came down and fell upon him, the poor youth cried, "indeed my Lord, it was not I;" yet, my Lords, the hands of violence seized him and killed him. Let us then see how the evidence brings it home to the noble Lord the prisoner at the bar; wherein I must confess we have no express evidence (nay, we have evidence to the contrary) that it was not his hand that did the fact actually, for it is by two witnesses; the footmen swore that it was Mr. Gerard who came down and gave the unfortunate blow: But we have that which we think, with humble submission, may reach this noble Lord; for I know your Grace and my Lords remember, that after they had been an hour in the park, both returning, did with horrid oaths swear they would kill the centinel; there the evidence fixeth it, not upon one only, but upon both; it was at that time so dark they could not be distinguished, but by the voice: The centinel hath given you an account how he performed his duty, and in what straight he was, he had much ado to save his own life, or to prevent killing them; but when they came upon the stairs, these two boys came there in order to desire the centinel to call one of them the next morning. Then one on the stairs (no man can tell who it was) with horrid execrations, asked, "Will you command the King's soldiers? Shoot him, Centinel, we'll bear you out." But all this while it was dusk, no distinction of persons could be made; whereupon it will fall out to come to this case, If several persons intend to kill one, and happen to kill another, whether this be not murder in them? For the urging of this, as to the matter in law, I leave to him that comes after me. The centinel swears one of them did swear he would kill one or other; who it was took up that cruel resolution, is left to you to judge; but at that time they were both together upon the top of the stairs, and

my Lord doth not seem to give one title of evidence, that shews any endeavours of the prisoner at the bar to prevent the other, or disapprove of his actions: If he had given an account of that, he had silenced justice; but when they were all together, he not endeavouring to stop his hand, it is as much in law, as if he had struck the stroke.

The other soldiers give you a particular account to the same purpose.

The two last witnesses do bring it to the person of my Lord, the prisoner at the bar, and Mr. Gerrard, who, they swore, came down the stairs, and his man followed him to the bottom, and there staid at some distance, till the fact was done, and they all fled.

This I take to be the matter of fact faithfully proved, before your Grace, and the Lords the Peers; and I would not trouble your Grace longer, because I would not misreport any thing, whereby I might do wrong, either to the prisoner, or the King's cause; and because I know your Grace and the noble Lords will distinguish and find out where the truth is. I must say it is a great comfort to all the subjects of England, that crimes of this nature are so carefully presented, that whatsoever honours and dignities our gracious Sovereign doth confer on any person, it doth not exempt him from the justice of the law: It is not only a comfort to this assembly, but to the whole nation, to see the King tender of his subjects persons and lives, in that he hath caused this strict course to be taken, where the enquiry hath gone from the grand jury of the county, till the bill came to this great tribunal; where I doubt not but your Grace, and these noble Lords, will give a righteous and just judgment.

Then Serjeant Maynard concluded thus:

May it please your Grace, my Lord High Steward of England, and my noble Lords the Peers.

I, according

I, according to the duty of my place, come now to conclude the charge on the King's behalf; some things are fit to be observed upon the evidence, that may produce a question for the decision of the fact, of what nature it is, that a murder is committed, is upon evidence without all question, and not only the death of a man; here is a child slain, without any provocation in the world given by him, to that person that did it; and that did it too, notwithstanding the deprecations of the boy, affirming his own innocency, and that with as full circumstances as a Christian almost could a thing: these came from the King's palace-walk in the park; call the centinel rogue, and when he doth his duty, swear to murder him; with oaths that a Christian would blush at, and be afraid to hear, *God damme* oftentimes reiterated; and he that saith that word, doth beg of God to hate him, and affirm that he doth hate God. The obscenity that they used I shall not mention again; these are circumstances of the case; that all were guilty of much, is no doubt; but who of the murder, is the question. And I humbly conceive, it is manifest, that this noble Lord was concerned in it. For it is not requisite to make a murder, that he who kills a man hath conceived a malice against him; for if I have a malice against any man, and the effect of that fall upon another, it is murder.

I apply it thus: If it be a murder in Mr. Gerrard, if this noble Lord partake with him in the design which made it so; to wit, the malice against the centinel, he is as guilty, as if his hand had been as much upon him as was Mr. Gerrard's; as in that known case of the * man that poisoned an apple, with an intent to kill his wife, and she not knowing of the poison, gave some of it to her child, of which it died; though he had no design to kill the child, yet the malice he had conceived against his wife

supplied the defect of an express malice to make it murder; and he was hang'd therefore. So if a man assault a master in the presence of his servant, who defends his master, and is slain, though the other had no purpose to kill him, yet it is felony in him, for which he shall die; the law implying a malice. Then here was clearly a malice to the centinel; how near it comes to the boy will come in question afterwards. I find the objection made in my Lord's case, That at the particular time wherein the fact was committed, my Lord was not with Mr. Gerrard: But that will be no objection in the case; for if he did partake in the design of the other, I will answer it with the case of my Lord Dacres of the South, who, with some others, went unlawfully to steal deer, and the keeper coming, some fled, among whom, my Lord was one: The keeper was killed, my Lord Dacres being at that time without the pales, a mile off from the place, and yet was found guilty of the murder, and left both his lands and his life for it. But here my Lord Conwallis was present, for the witness swears, the distance was not so great but it might be discerned. Now whether he was aiding or assisting, is the next thing in question. What occasion had they of malice, revenge, or injury to the centinel? They both swore they would kill him: Had there been any excuse for the other, if one of them had killed the centinel? that could not be. Well, they did not kill the centinel, but at the same time take up a causeless offence against another, and kill him. I argue, that the malice against the soldier was diffusive to the boy; and one of the witnesses proves, that one of them swore he would kill somebody: Now, no one speaks to any thing of my Lord's reproving Mr. Gerrard. Thus stands the case before your Grace and my Lords; it is a case of blood, and it cries loud; How far this noble Lord and prisoner at the bar, is guilty

* Saunders's Case, in Plowden, folio 473.

guilty thereof, you are to enquire, and without all doubt will give a clear verdict, according to justice and honour.

Lord High Steward. My Lords, you have heard the evidence of your Lordships; please to go, and consider of it, you may.

Then the prisoner withdrew into his own apartment, with the Lieutenant of the tower. The Lords went into a room behind the Court of Chancery, and after a stay of two hours, returned, and being all sat; the Earl of Danby, Lord High Treasurer of England, who was the first of the jury, addressed himself to my Lord High Steward, and said:

Earl of Danby. My Lord High Steward there is a question in law, of which some of my Lords desire to receive satisfaction, before they can give in their full verdict; and we desire to know of your Grace, whether it be proper here to ask the question of your Grace, or to propose it to the Judges.

Lord High Steward. If your Lordships doubt of any thing, whereon a question in law ariseth, the latter opinion, and the better for the prisoner is, that it must be stated in the presence of the prisoner, that he may know whether the question be truly put. It hath sometimes been practised otherwise; and the Peers have sent for the Judges, and have asked their opinion in private, and have come back, and given their verdict, according to that opinion; and there is scarce a precedent of its being otherwise none; but there is a latter authority in print, that doth settle the point so as I tell you; and I do conceive it ought to be followed; and it being safer for the prisoner, my humble opinion to your Lordships is, that he ought to be present at the stating of the question.

Call the prisoner to the bar. Who being come, my Lord spake thus to him:

Lord High Steward. My Lord Conwalis, my Lords the Peers, since they have withdrawn, have conceived a doubt, in

in some matter of law arising upon the matter of fact in your case; and they have that tender regard of a prisoner at the bar, that they will not suffer a case to be put up in his absence, lest it should chance to prejudice him, by being wrong stated; therefore, your Lordship will do well to attend the question that is raised; and, my Lords, will you please to propound your doubts?

Earl of Danby. It was taken notice of here, that by opening the matter by Mr. Solicitor, the matter of murder was explained, to be meant by having a premeditated malice, and in that case it was opened to us, that any persons then present, and that had in any sort contributed to the disorders, they were as equally guilty, as they whose hand had shed the blood of the person killed.

Now the doubt of some of my Lords is, whether if it be found but man-slaughter, those are equally guilty, that are present (and have proved to contribute to the disturbance) of that crime, as they are in murder; because some of them have not the satisfaction that they are the same.

Lord High Steward. My Lords the Judges, I take it, the doubt proposed to you, is this; whether or no, those that are present, and have contributed to the disorders, whereby such an accident doth ensue, as proves to be man slaughter, be as culpable, as he that doth the immediate fact, as it is in the case of murder?

After a little pause and conference, the Judges returned this answer.

Judges. We have had conference of this case, and our humble opinion is, If sundry persons be together, aiding and assisting to an action, wherein a man-slaughter doth ensue, as in case of a sudden business without malice premeditated, they are equally guilty with the man slaughter, as they are in the case of murder premeditated.

Earl of Danby. The Lords desire to withdraw once more, which they did, and after a short space returned; and being called

called over, answered to their names, and all appearing, my Lord High Steward, took their verdict *seriatim*, beginning at the puisne Lord in the following orders, they answering, standing bare with their hands on their breasts.

Lord High Steward. My Lord Duras, is Charles Lord Conwallis guilty of the felony and murder, whereof he stands indicted, or not guilty?

Lord Duras. Not guilty.

The same question he demanded of each, who answered thus:

Lord Butler, not guilty.

Maynard, not guilty of murder, but guilty of man-slaughter.

Paget, not guilty.

Berkly, not guilty of murder, but guilty of man-slaughter.

Newport, not guilty.

Hallifax, not guilty.

Viscount Cambden, not guilty.

Guilford, not guilty.

Alisbury, not guilty of murder, but guilty of man-slaughter.

Craven, not guilty.

Bath, not guilty.

Clarendon, not guilty.

Sunderland, not guilty.

Peterborough, not guilty.

Devonshire, not guilty.

Northampton, not guilty.

Bridgwater, not guilty.

Dorset, not guilty.

Suffolk, not guilty.

Bedford, not guilty.

Derby, not guilty.

Kent, not guilty.

Oxford, not guilty.

Arlington, not guilty.

Brereton, not guilty.

Lindsey, not guilty of murder, but of man-slaughter.

Dorchester, not guilty.

Anglesey, not guilty of murder, but of man-slaughter.

Danby, not guilty of murder, but of man-slaughter.

Lord High Steward. Call the prisoner to the bar.

Then the prisoner came to the bar, and the deputy lieutenant of the tower held the edge of the ax towards him, while my Lord High Steward spake thus unto him:

Lord High Steward. My Lord Conwallis, you have been indicted for murder, pleaded not guilty, put yourself upon your Peers; and your Peers, upon consideration of the whole matter, have acquitted you, and found you not guilty, so you are to be discharged.

Cl. Cr. Make proclamation.

Serj. O Yes! my Lord High Steward of England, willeth and commandeth all persons, to depart hence in God's peace and the King's; for my Lord High Steward of England His Grace doth dissolve his commission.

God save the King.

At which words my Lord High Steward holding the white staff (which was delivered him by the usher of the black rod on his knees) in both hands over his head, snapt in two, and the Assembly broke up.

The Trial of Sir THOMAS GASCOIGNE, Bar. On Saturday the 24th of January, 1679. Sir Tho. Gascoigne was brought to the Bar of the Court of King's-Bench, to be arraigned for High Treason: Which was done accordingly in this manner.

Clerk of the Crown.

SIR Thomas Gascoigne, hold up thy hand.

Sir Tho. Gascoigne. I cannot hear.

Clerk. He says he cannot hear.

L. C. J. [Sir William Scroggs] Then some body must repeat it that stands by him.

Mr. Recorder. Do you hear what I say to you?

Sir Tho. Gascoigne. No, I cannot hear, I am very deaf.

Then the Clerk of the Crown went down close to the bar, and went on thus:

Cl. of Cr. Sir Thomas Gascoigne, hold up thy hand.

[Which he did.]

Thou standest indicted by the name of Sir Thomas Gascoigne, late of the parish of Elmet, in the West-riding in the county of York, Bar. For that thou, as a false traitor against our most illustrious and excellent Prince King Charles the Second, thy natural Lord, not having the fear of God in thy heart, nor weighing the duty of thy allegiance, but by the instigation of the devil moved and seduced, the cordial love and true, due, and natural obedience which true and faithful subjects of our said Lord the King should bear to him, and of right are bound to bear, wholly withdrawing, devising, and with all thy power intending to disturb the peace and common tranquillity of this realm, and to bring and put our said Lord the King to death and final

destruction; and the true worship of God in this kingdom, by law established and used, to alter unto the superstition of the Church of Rome, and to move and stir up war against our said Lord the King in this realm, and to subvert the government of this kingdom; the thirtieth day of May, in the one and thirtieth year of our said Lord the King's reign, at the parish of Barwick in Elmet in the said county of York, in the West-riding of the same county, with divers other false traitors unknown, didst traiterously compass, imagine and intend the death and final destruction of our said Lord the King; and to change and alter, and wholly to subvert the ancient government of this realm; and to depose, and wholly to deprive the King of the crown and government of this kingdom, and to root out the true Protestant religion. And to fulfil and accomplish the same most wicked treasons and traitorous imaginations and purposes, the said Gascoigne, and other false traitors unknown, on the said thirtieth day of May, in the one and thirtieth year aforesaid, with force and arms, &c. at the parish of Barwick aforesaid, advisedly, devilishly, maliciously and traiterously did assemble, unite and gather together themselves, and then and there did devilishly, advisedly, maliciously, craftily, and traiterously consult and agree to bring our said Lord the King to death and final destruction, and to depose and deprive him of his crown and government, and to introduce and establish the religion of the Roman

Roman church in this realm. And the sooner to fulfil and accomplish the same most wicked treasons and traitorous imaginations and purposes, thou the said Gascoigne, and other unknown traitors, then and there advisedly, maliciously and traiterously did further consult and agree to contribute, pay and expend divers large sums of money to divers of the King's subjects and other persons unknown, to procure those persons unknown, traiterously to kill our said Lord the King, and to introduce the Roman religion into this realm. And that thou the said Gascoigne afterwards (to wit) on the said thirtieth day of May, in the one and thirtieth year aforesaid, at the parish aforesaid, didst falsely, advisedly, craftily, maliciously and traiterously solicit one Robert Bolron to kill our said Lord the King; and then and there, with an intent sooner traiterously to encourage the said Bolron to undertake the killing and murdering of our said Lord the King, offeredst therefore to give and pay the said Bolron 1000*l.* of lawful money of England; against the duty of thy allegiance, against the peace of our said Lord the King, his crown and dignity, and against the form of the statute in such case made and provided. How say'st thou, Sir Thomas Gascoigne, art thou Guilty of this High Treason whereof thou standest indicted, and hast been now arraigned, or Not Guilty?

Sir Tho. Gasc. *Gloria Patri, Filio & Spiritui sancto*, I am not guilty.

Cl. of Cr. Not Guilty, you must say.

Sir T. Gasc. Not Guilty; nor any of my family were ever guilty of any such thing: I hope I shall be tried fairly.

Cl. of Cr. How will you be tried?

Sir T. Gasc. By God and my country.

Cl. of Cr. God send thee a good deliverance.

Sir T. Gasc. I desire, that in order to my trial, I may have a jury of gentlemen, of persons of my own quality, and of my own

country, that may be able to know something how I have lived hitherto; for I am above fourscore and five years old.

L. C. J. Tell him he shall have a good jury of gentlemen of his own country.

Sir T. Gasc. And besides, my Lord, I desire to know when I shall be tried.

Mr. Att. Gen. [*Sir Creswel Levins*] Some time about the latter end of the term, as soon as I can get a jury up.

Sir T. Gasc. I do not know whether I can produce all my witnesses at that time, if there be not a longer time allowed me; for I have a great many witnesses to fetch up: These witnesses must be all here, or I can't make my defence; and I know not how they shall be got hither in so little time.

L. C. J. Tell him he may have what witnesses he pleases, and the aid of this court to fetch them.

Mr. Just. Dolben. Name them who they are.

Mrs. Ravenscroft. My Lord, some of his witnesses are at Paris.

Mr. Just. Dolben. Why, he will not be tried this fortnight.

Mrs. Ravenscroft. They will not have time to come over between this and that.

Mr. Just. Dolben. Mistress, he had reason to believe that he should be tried some time this term, for so the council ordered it; and therefore he should have got his witnesses ready.

Mrs. Ravenscroft. My Lord, he did not know where they were till a week ago.

Mr. Just. Dolben. Look you, Mr. Attorney, here is a lady that is, I suppose, some relation to this gentleman.

Mrs. Ravenscroft. He is my grandfather, my Lord.

Mr. Just. Dolben. She says a fortnight's time will be too little to get his witnesses together for his defence, because some of the witnesses are beyond sea at Paris, she says.

Mr. Att. Gen.

Mr. *Att. Gen.* My Lord, I am willing he should have as long time as the term will allow of: But sure that is long enough to get any witnesses from Paris.

L. C. J. What say you to Sir Miles Stapleton? I see he is joined in the indictment.

Mr. *Att. Gen.* My Lord, he is not come up yet.

L. C. J. Will you try the one without the other?

Mr. *Att. Gen.* Yes, my Lord, if we cannot have both: He is in the hands of the messenger at York; we have writ down to know the state of his health to some of the Justices of the Peace, and the messenger returns word, he is sick and can't come: I have sent down an *Habeas Corpus* to the messenger to bring him up; let him return a *Languidus* at his peril; that's all I can do.

L. C. J. Well, what day do you appoint for Sir Thomas's trial?

Mr. *Att. Gen.* Tuesday come fortnight I think will be a good day.

Mr. *Just. Dolben.* By that time, Mistress, you may get your witnesses; you must send a messenger on purpose.

Mrs. *Ravenscroft.* But if the wind should be contrary, my Lord, and they cannot be brought over?

Mr. *Just. Dolben.* 'Tis not an usual thing to have the winds long contrary between Dover and Calais.

Mrs. *Ravenscroft.* But if it do fall out that he wants a material witness at his trial, I hope his life will be considered.

Mr. *Just. Dolben.* He should have had them ready, he had warning before.

Mrs. *Ravenscroft.* We could do it no sooner, because we knew not where they were.

Mr. *Just. Dolben.* He saith he hath a great many witnesses; are they all at Paris?

Mr. *Att. Gen.* There are a great many in town we know already.

Mrs. *Ravenscroft.* If we had known when exactly, we might have been more ready perhaps.

Mr. *Att. Gen.* But we could give no notice sooner; it is early in the term now. But there is time enough to get any witnesses.

L. C. J. Ay, you may send to Paris, a great many times between this and that.

Mrs. *Ravenscroft.* What if the letter miscarry, my Lord?

Mr. *Just. Dolben.* Why, you must send a special messenger.

Mr. *Att. Gen.* My Lord, if you please, let it be Wednesday fortnight, the last day but one of the term; because I would give him as much time to provide himself as I can.

Mr. *Just. Pemberton.* Well, Mistress, you must send a special messenger; we must not consult your conveniency; do it as well as you can, you have time enough.

Mr. *Just. Dolben.* Your grandfather is a man of an estate, he may very well, in this case, be at the charge of a special messenger.

Mrs. *Ravenscroft.* But what if the winds be contrary, must my grandfather's life be lost?

L. C. J. We must give you that favour we can by law, and you must be content: Tell us at the tryal what you have done.

Then the Lieutenant of the Tower was ordered to take the prisoner back, and by rule to bring him to the bar on Wednesday the 11th of February.

On which day the prisoner being brought up, the tryal proceeded thus:

Mr. *Att. Gen.* My Lord, here is an extraordinary matter. Sir Thomas Gascoigne had a rule for some friend to assist him, by reason of the defect of his hearing; and now there are three of them that are got among the jury.

L. C. J. No, no, they must come in of the inside of the bar.

Mr. *Att. Gen.*

Mr. Att. Gen. Pray let him tell which he will make choice of; for he is by the rule to have but one.

Mr. Just. Pemberton. Tell him there can but one stay.

Counsel. He says one of them came out of the country, and knows the persons that are the witnesses, which he does not himself.

L. C. J. Well, let the other come in, let him have them both.

Counsel. He says, the principal man he depended upon is clapped up.

L. C. J. Well, we can't help that.

Then way was made for the jury to come up to the stand, and proclamation for information was made in usual manner.

Cl. of Court. Sir Thomas Gascoigne, hold up thy hand.

Sir T. Gasc. I cannot hear what is said.

Cl. of Cr. Those good men which were lately called, and have appeared, are to pass, &c.

L. C. J. Tell him the effect of it. If he will make any challenges to the jury, he must speak to them before they are sworn.

Hobart. If you will challenge any of the jury, you must speak to them before they are sworn.

Sir T. Gasc. I cannot hear who is called.

L. C. J. Tell him who is called.

Cl. of Cr. Sir Thomas Hodson.

Hobart. This is Sir Thomas Hodson, Sir.

Sir T. Gasc. What must I say? Ay, or No?

Hobart. Do you except against him?

Sir T. Gasc. No. [Who was sworn.

Cl. of Cr. Richard Beaumont, Esq;

Hobart. Do you challenge him, Sir?

Sir T. Gasc. No.

Mr. Att. Gen. Pray, my Lord, here is Sir John Cutler in the pannel, one that lives in town, and is the foreman of the jury; I desire the court to take notice of his not appearing in particular.

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Cl. of Cr. John Gibson, Esq;

The prisoner challenged him.

Mr. Serj. Maynard. I perceive they skip a great many; pray call them as they are in the pannel, and record their non-appearance in court.

Which was done accordingly; but their names that did not appear, for brevity sake, are omitted.

Cl. of Cr. Nicholas Maleverer, Esq;

Mr. Att. Gen. We challenge him for the King. I perceive the best gentlemen stay at home.

Mr. Serj. Maynard. Yes, 'tis so small a business.

Cl. of Cr. Beckwith, Esq; challenged by the prisoner.

Stephen Wilks, Esq; sworn.

Matthew Prince, Esq; challenged by the prisoner.

Thomas Graver, Esq; challenged by the prisoner.

Jervas Rockley, Esq; sworn.

William Walker, Esq; challenged by the prisoner.

John Dimmocke, Esq; challenged by the prisoner.

Samuel Jenkinson, Esq; challenged by the prisoner.

Robert Leeke, Esq; sworn.

William Batt, Esq; sworn.

Richard Burton, Esq; challenged by the prisoner.

Robert Auby, Esq; challenged by the prisoner.

Charles Best, Esq; sworn.

Robert Long, Esq; challenged by the prisoner.

John Crosse, Esq; sworn.

Barton Allett, Esq; sworn.

William Milner, Esq; sworn.

John Oxley, Esq; sworn.

Francis Oxley, Esq; sworn.

Cl. of Cr. Cryer, count these.

5-A

JURY.

A COLLECTION OF TRIALS. JURY.

Sir Thomas Hodson,	Charles Best,
Richard Beaumont,	John Crosse,
Stephen Wilks,	Barton Allet,
Jervas Rockley,	William Milner,
Robert Leeke,	John Oxley,
William Batt,	Francis Oxley.

Cryer. Twelve good men and true, stand together and hear your evidence.

Cl. of Cr. Sir Thomas Gascoigne, hold up thy hand. Gentlemen, you of the jury that are sworn, look upon the prisoner and hearken to his charge. You shall understand, That he stands indicted by the name of Sir Thomas Gascoigne, late of the parish of Elmet, &c. Pro ut in the indictment, *mutatis mutandis*. Upon this indictment he hath been arraigned, and thereunto pleaded Not Guilty; and for his trial hath put himself upon his country, which country you are, &c.

Then proclamation for evidence was made, and——Dormer, Esq. of Counsel for the King in this cause, opened the indictment thus:

Mr. Dormer. May it please your Lordship, and you gentlemen of the jury, Sir Thomas Gascoigne, Baronet, the prisoner at the bar, stands indicted for High Treason, in conspiring the murder of his Majesty, the subverting of the government, and the introducing the Romish religion: And for the effecting these purposes, the indictment sets forth, That the said Sir Thomas Gascoigne, Sir Miles Stapleton, and other false traytors, on the 30th of May last, at the parish of Elmet, in the West-Riding of the county of York, did assemble together, and there resolved to put their treasons in execution. And the better to accomplish their said treasons and traiterous imaginations, they did agree to contribute several large sums of money to several of his Majesty's subjects unknown,

to introduce Popery, to kill the King, and subvert the government: And that Sir Thomas Gascoigne did solicit Robert Belton to kill the King, and for that service he was to pay him 1000 l. To this he hath pleaded Not Guilty: If the King's evidence prove the charge of the indictment, your duty is to find him guilty.

Mr. Serj. Maynard. May it please your Lordship, and you, Gentlemen of the Jury, you have heard the indictment, and it hath been opened to you. There can be no greater crime charged upon any, than that this gentleman is accused of. The design hath been to kill and murder the King, to change the religion and the government; and to effect this, they make assemblies, they offer money: And this, my Lord, we shall prove. 'Tis no new crime, divers have suffered for the like already; and we shall not need to make any aggravations, for indeed it cannot be aggravated more than the plain matter itself is. We shall call our witnesses, and prove it directly upon him, even by two witnesses; and we shall prove, that he held intelligence with one Preswicke, a Priest; letters between him and that person are found in his custody, and we shall produce one of them wherein it doth appear, that there was intelligence between them, and consultations had about the oath of allegiance; and that Praud did write to him, that it was a damnable oath condemned by the Sorbonnists: And upon that point hangs the changing of religion; for the oath of allegiance is the great touchstone to discover men's sincerity by, and the great bond to tie them to the government, and to the Protestant Religion. And we shall likewise prove another passage in a letter indorsed with the prisoner's own hand, wherein there is an expression to this purpose: "That if England be converted, (the Priest writes this to him) then how a sum of ninety pound was to be disposed:" Which was, as you shall hear, and we shall prove.

prove, in a nunnery. "If England be converted," that clearly shews what was their intention, not only to destroy the King, but the religion and the nation; and so they were conspiring not only against his Majesty, but against God. That an old gentleman that hath lived so long under the peace of this nation, and been so protected by the government, which hath been so indulgent to men of his persuasion, should be guilty of such a design, is a lamentable thing to think of; that he should so offend the law, which hath been so mild in its execution against such men. We shall prove the profer of the 1000*l.* and so leave it with you.

Mr. *Att. Gen.* My Lord, these two papers we shall use in confirmation of that evidence, will be given by two witnesses, who I think will concur in the same thing; that is, the conspiracy for killing the King, and for the carrying on of the plot. The papers the witnesses will expound to you; the one is a letter, as Mr. Serjeant hath opened it to you; to Sir Thomas Gascoigne from a priest, wherein he does discourse about 90*l.* a year at *Maunston*, which Sir Thomas had purchased to settle upon a nunnery called Dolebank in Yorkshire; and therein it is said, you will be well advised to put a proviso into the former writing (he meant for the settlement) That if England be converted, the 90*l.* a year shall be bestowed at Heworth, or some other place in Yorkshire. Your Lordship will hear by the witnesses, that there were several places designed for these nuns to inhabit, as Dolebank and other places; and this letter will concur with their evidence, and they will prove, that this very place that they speak of, was designed for this purpose; and so it appears by the papers taken in Sir Thomas Gascoigne's custody. My Lord, there is another letter which was mention'd, and which I believe may have a great influence in the cause, I am

sure it may be likely to produce very bad effects, which is that letter from the priest, wherein he decries the Oath of Allegiance as a damnable thing condemned by the doctrines at Sorbonne, and other priests from Rome. And this had its effect a little time before; for it was about the time that a matter of thirty or forty were convicted of a *præmunire* in that country, for not taking the Oath of Allegiance, which they used to do before. And there will be some other concurring evidence in this cause, and is by some papers taken in Sir Thomas Gascoigne's own hand; they are almanacks, in which many of his own memorials are, several sums of money mentioned to be paid, and returned to priests at London: The witnesses will tell you it was returned for the design of the plot. There happens to be 900*l.* return'd to Mr. Corker, who is now in Newgate; and some other sums to Harcourt, who is executed; and some money is paid to him, though I think not much, about 25*l.* and several sums are mentioned, and great sums return'd to London by Sir Thomas Gascoigne, in five or six years time, 5 or 6000*l.* to what purpose I can't tell; they will give you an account: I think he did live always in Yorkshire himself, never used to come to town; and what occasion he might have of returning money, I don't know. We will call the two witnesses *viva voce*, and then use the other evidence as we shall have occasion to confirm them. Call Mr. Bolron and Mr. Mowbray. [who were sworn.]

Mr. *Att. Gen.* Mr. Bolron, tell my Lord and the Jury what you know of Sir Thomas Gascoigne.

Mr. *Bolron.* My Lord, and you, Gentlemen of the Jury, I came to live with Sir Thomas Gascoigne in the year 1674, as Steward of his coal works; and in the year 1675, a little before Easter, being in the next room to Sir Thomas Gascoigne, I did

I did hear Charles Ingleby and Sir Thomas in discourse together, and Sir Thomas did say, he was very fearful his estate would be liable to be forfeited to the King—

L. C. J. In 75 was this?

Mr. Bolron. Yes, my Lord.

L. C. J. What time in 75?

Mr. Bolron. A little before Easter.

L. C. J. Were you in the room?

Mr. Bolron. I was in the next room, and the door was not shut; and Sir Thomas did say—

Mr. Att. Gen. Tell the discourse what it was.

Mr. Bolron. He said he was resolved to make a collusive conveyance of his estate, for fear it should be forfeited to the King. And Charles Ingleby said, it was best so to do: and then he told Sir Thomas he would have the defeazance made ready, which he would draw with his own hands; but he bid him be sure to bring none but Protestant witnesses along with him to testify. And in the year 1675, I did go along with Sir Thomas Gascoigne to Sir William Ingleby's of Ripley, and there I did see him receive colourably 1000l.

L. C. J. How do you know it was colourably?

Mr. Bolron. I did hear Sir Thomas tell Charles Ingleby so.

L. C. J. When was that?

Mr. Bolron. The 7th or 8th of April; the deed bears the 8th of April 1675.

L. C. J. Was Charles Ingleby there at that time?

Mr. Bolron. Yes, when the deed was sealed; and he read it in the presence of the witnesses to be dated at that time.

Mr. Just. Dolben. What, that thousand pound was the consideration of the deed?

Mr. Bolron. Yes, it was. Sir Thomas Gascoigne did part thereby with all his estate for seven years, he allowing him 100l. a year for his maintenance, besides the 1000l. at first paid. And this was

done with that intent, for fear he should be discovered in the plot for killing the King—

L. C. J. How do you know that?

Mr. Bolron. I did hear Sir Thomas Gascoigne and Sir Miles Stapleton discourse of it, and he said it was for that end.

L. C. J. Where was that discourse?

Mr. Bolron. In Sir Thomas Gascoigne's bed-chamber.

Mr. Just. Jones. When was that?

Mr. Bolron. It was in or about the discovery of the plot.

L. C. J. But you say you saw the deed sealed.

Mr. Bolron. Yes, I was a witness to it.

L. C. J. And you saw the money paid?

Mr. Bolron. I and one Matthias Higgin-gil did help to count it.

Mr. Just. Jones. Were you a Protestant at that time?

Mr. Bolron. Yes, my Lord, I was at the time of the sealing the deed; but I did hear the discourse between Sir Miles Stapleton and Sir Thomas Gascoigne upon the discovery of the plot, when I was a Papist.

L. C. J. When was the discourse you speak of with Sir Miles Stapleton, do you say?

Mr. Bolron. It was about the discovery of the plot.

L. C. J. After the money paid?

Mr. Bolron. Yes, after the money paid: And he said to Sir Miles Stapleton, he had done well to make over his estate.

L. C. J. That is an abrupt thing for him to say; how did he begin the discourse?

Mr. Bolron. They were discoursing about the discovery of the plot by Dr. Oates and Mr. Bedloe; and then Sir Thomas Gascoigne said to Sir Miles Stapleton, I have done well to make over my estate to Sir William Ingleby, to prevent a forfeiture.

L. C. J. What said Sir Miles Stapleton?

Mr. Bolron. I do not know what he said very well.

L. C. J.

L. C. J. You seemed but now, as if he had said he was in the plot.

Mr. Just. Jones. Did he own he was in the plot?

Mr. Bolron. Yes.

L. C. J. When?

Mr. Bolron. At several times.

Mr. Serj. Maynard. Tell the manner how he was concerned.

Mr. Bolron. My Lord, in the year 1676, I did hear Sir Thomas Gascoigne say to one Christopher Metcalfe, that he was resolved to send 3000*l.* to the Jesuits in London for the carrying on of the design.

L. C. J. What time in 76?

Mr. Bolron. The beginning of the year 76.

L. C. J. To whom did he say so?

Mr. Bolron. To one Christopher Metcalfe.

L. C. J. Were you a Papist then?

Mr. Bolron. Yes.

L. C. J. When came you first to be a Papist?

Mr. Bolron. About Whitsontide, 75.

Mr. Just. Jones. You are a Protestant now?

Mr. Bolron. Yes, my Lord, I am so.

L. C. J. When did you turn Protestant again?

Mr. Bolron. I turned Protestant upon the discovery of this business.

L. C. J. When?

Mr. Bolron. Either the beginning of May or the latter end of June.

L. C. J. To whom did he speak it?

Mr. Bolron. To Christopher Metcalfe, who then lived in his house.

L. C. J. What said he?

Mr. Bolron. He said, he was to send 3000*l.* to the Jesuits in London, for the carrying on of this design.

L. C. J. Who was in the room besides?

Mr. Bolron. None but Sir Thomas Gascoigne and Metcalfe.

L. C. J. Where is that Metcalfe?

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Mr. Bolron. He is since dead, I think.

L. C. J. What discourse had they about the design?

Mr. Bolron. They were discoursing about it when I came in; and I remember he mentioned 300*l.* for Corker, 300*l.* for Harcourt, and 300*l.* for Cornwallis; and the rest by 300*l.* a-piece to other persons.

Mr. Att. Gen. What name did Cornwallis go by besides?

Mr. Bolron. Præcid, my Lord.

Mr. Att. Gen. That's the name that is to the letter.

Mr. Just. Pemberton. Well, what do you know more?

Mr. Bolron. My Lord, Sir Thomas Gascoigne told this Christopher Metcalfe, that he would return it by 300*l.* at a time, to prevent suspicion, by the hands of Richard Phisick; and about the beginning of the year 77, I did hear Sir Thomas Gascoigne say, that he had returned it, and that if it had been a thousand times as much, he would be glad to spend it all in so good a cause.

L. C. J. Did he say he had returned all the 3000*l.*?

Mr. Bolron. Yes.

L. C. J. Did he tell you how it was to be disposed of?

Mr. Bolron. It was to be disposed among the Jesuits for the carrying on of the design.

L. C. J. That was in the general; but this 900*l.* you speak of, was to those three Priests?

Mr. Bolron. Yes.

Mr. Just. Jones. You say he resolved to send 3000*l.* to the Jesuits at London about this design; pray what was the design? What did they say about the plot at that time?

Mr. Bolron. My Lord, at other times I have heard them say it was for killing the King.

L. C. J. What said Metcalfe to all this?

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Mr. *Bolton*. He did allow of it, and thought it was the best way so to do. I have seen him return several sums by Richard Phisick.

Mr. Just. *Dolben*. Was Metcalfe a Papist?

Mr. *Bolton*. Yes, and he died so, as I have heard.

L. C. J. Was you in the room when they first began the discourse?

Mr. *Bolton*. No, my Lord, I came in when they were discoursing.

L. C. J. You came in when they were talking, you say; but they did not stop talking because you came in?

Mr. *Bolton*. No, my Lord, because I knew of it: I was brought in by one Rushton, who was acquainted with the plot, to know of it, and therefore they did not stop me when I came in.

L. C. J. You say he said, I will return 3000l. to the Jesuits in London: Did he say in what time he would send that 3000l?

Mr. *Bolton*. No, but in 76 he said he would do it.

L. C. J. And it should be employed for carrying on the design?

Mr. *Bolton*. Yes, those were the words.

L. C. J. And in 77 you heard him talk with Metcalfe again? And then he said, If it had been a thousand times as much he would have sent it.

Mr. *Bolton*. Yes.

L. C. J. Was nobody there but he, Sir Thomas Gascoigne, and you?

Mr. *Bolton*. No body else.

L. C. J. Then go on with your evidence.

Mr. *Bolton*. My Lord, in the year 77 several gentlemen did meet and assemble together at Barnlow-hall in the county of York, Sir Thomas Gascoigne's house; and their resolution was this, That they would build a Nunnery at Dolebank, in case that their design and plot of killing the King should take effect, and the Roman Catholic religion be established in England: Upon which account, the company there present

did resolve they would lose their lives and estates to further it: And Sir Thomas Gascoigne did conclude he would give 90l. a year for ever for the maintainance of this Nunnery: Upon which they all agreed, that after his death he should be canonized a saint.

L. C. J. Who were these gentlemen?

Mr. *Bolton*. Sir Miles Stapleton, Charles Ingleby, Esquire Gascoigne, my Lady Tempest, Thomas Thwing, Sir Walter Vavasor, Sir Francis Hungatt, and Robert Killingbeck, a Jesuit, and William Rushton, a Romish Priest.

Mr. Just. *Pemberton*. Is he dead?

Mr. *Bolton*. No, he is fled beyond sea.

L. C. J. Who else?

Mr. *Bolton*. These are the persons I can remember at present.

L. C. J. There was a woman there you say?

Mr. *Bolton*. My Lady Tempest, my Lord, and one William Rushton, if you had not him before.

Mr. Just. *Dolben*. That was your Confessor?

Mr. *Bolton*. Yes, and engaged me in the plot.

Mr. Just. *Pemberton*. What was your discourse? pray tell that.

Mr. *Bolton*. The discourse was upon establishing a Nunnery at Dolebank, in hopes that the plot of killing the King would take effect: The intention was to alter the government, and introduce the Romish religion.

L. C. J. Who was it said this?

Mr. *Bolton*. It was spoken by Sir Thomas Gascoigne and the rest of the gentlemen.

L. C. J. In their discourse?

Mr. *Bolton*. Yes.

L. C. J. Did they speak of killing the King?

Mr. *Bolton*. Yes, my Lord, Sir Francis Hungatt said it several times.

L. C. J. How? Upon what account?

Mr.

Mr. Bolron. They were mutually resolved and they would talk that they would venture their lives and estates in hopes the plot would take effect; and accordingly about Michaelmas, 1677, or near upon, as I remember—

L. C. J. How long staid they there?

Mr. Bolron. About six or seven hours.

L. C. J. Were you with them in the room still?

Mr. Bolron. My Lord, I was sometimes in the room, and sometimes out: What discourse I heard, I tell you; there was one Barloe—

L. C. J. What was that Barloe?

Mr. Bolron. I have had two orders of council for the seizing of him, and never could take him; he is a Priest.

L. C. J. Was he by?

Mr. Bolron. He went with them to take possession of the Nunnery.

L. C. J. Was he not in the house?

Mr. Bolron. No, not in the room at that time.

L. C. J. Was there any servant by in the room when this discourse was?

Mr. Bolron. No.

L. C. J. Well, go on.

Mr. Bolron. Accordingly Sir Thomas Gascoigne did erect a Nunnery about the year 77, at Dolebank.

L. C. J. What, built it?

Mr. Bolron. He established it.

L. C. J. Who were the nuns?

Mr. Bolron. Mrs. Lashals was Lady Abbess, Mrs. Beckwith and Mrs. Benningfield were her assistants, Ellen Thwing, Elizabeth Butcher, and others, were Nuns, according as I heard Sir Thomas Gascoigne say: And when they went by Sir Thomas Gascoigne, when one Mary Root was taking horse, Sir Thomas Gascoigne said of her, There goes an old maid and a young nun.

L. C. J. Whither where they going then?

Mr. Bolron. To take possession of the Nunnery.

L. C. J. Was it a new built house?

Mr. Bolron. They called it a Nunnery in hopes their plot would take effect.

L. C. J. Was it an old or new built house?

Mr. Bolron. Nay, I never saw it.

L. C. J. Whereabouts was this house.

Mr. Bolron. It was near Ripley.

L. C. J. What, was that Ripley his house?

Mr. Bolron. No, his house is at Barnbow.

L. C. J. Who did it belong to?

Mr. Bolron. They went thither till the business was done, and that was only till the King was killed, and afterwards they resolved to reside at Heworth.

L. C. J. How long staid they there?

Mr. Bolron. They lived in this place near a year and half.

L. C. J. Till the plot was discovered?

Mr. Bolron. Yes.

Mr. Just. Jones. How do you know they lived there?

Mr. Bolron. I have seen several times letters come from their hands.

Mr. Just. Jones. How do you know they came from thence?

Mr. Bolron. The letters were dated from Dolebank.

L. C. J. Did he let them lie open?

Mr. Bolron. Sometimes he did.

L. C. J. What was in them?

Mr. Bolron. I don't know any of the particulars, there was no great matter in them.

L. C. J. Who writ them?

Mr. Bolron. The name that I saw was Pracid, or from Mr. Lashals.

Mr. Att. Gen. They, or some of them.

L. C. J. You do not know whose house it was?

Mr. Bolron. No, my Lord, not I.

L. C. J. Where is Heworth-hall?

Mr.

Mr. Bolron. Heworth-hall is about half a mile off of York.

Mr. Just. Dolben. Does not that belong to one Mr. Dawson?

Mr. Bolron. It did, but it was bought of him.

Mr. Att Gen. What other place did you hear him mention?

Mr. Bolron. Broughton, my Lord, but I never knew that any were there.

L. C. J. Nor at Heworth-hall.

Mr. Bolron. Yes, my Lord, sometimes one and sometimes the other; some of them came to Heworth-hall, and some to Dolebank, but Dolebank was the place they did generally reside at: And then Sir Thomas did establish golf a year, which was purchased of Mr. Tim. Maleverer, and Alver Aloftus enjoys it.

L. C. J. How much was it?

Mr. Bolron. Ninety-pounds a year.

L. C. J. Where doth it lie?

Mr. Bolron. It lies at a place call'd Mawson near Sir Thomas Gascoigne's house.

L. C. J. Did he say he had seal'd such a conveyance?

Mr. Just. Dolben. I suppose he bought it of Dawson.

Mr. Bolron. He bought it of Maleverer.

L. C. J. Is Maleverer a Protestant?

Mr. Bolron. Yes, my Lord.

L. C. J. Where is he?

Mr. Bolron. I can't tell.

Mr. Just. Jones. You did not see the conveyance of it yourself seal'd?

Mr. Bolron. No, I refer to their words for that.

Mr. Just. Jones. To what purpose was it bought?

Mr. Bolron. To establish a Nunnery.

Mr. Just. Pemberton. And they told him he should be canoniz'd for a saint when he died?

Mr. Bolron. Yes, my Lord.

L. C. J. Well, go on then.

Mr. Bolron. My Lord, about March last, to the best of my remembrance, Sir Thomas Gascoigne and Esquire Gascoigne being in their chamber together, I was reading a book call'd, "The Lives of the Saints," and Esquire Gascoigne told Sir Thomas that he had been before the Justices of the Peace, and they had given to him and Mr. Middleton licence to go up to London, which mentioned, that in consideration that there was a suit in law between James Nelthorp, Esq; and Sir Thomas Gascoigne, therefore it permitted the said Thomas Gascoigne, Esq; and his man to travel peaceably to London. And I did hear the other copy read of Mr. Middleton's license to travel into the south, and for his occasion into the south parts was pretended to receive some rents there. But I did hear Esquire Gascoigne say to Sir Thomas, that he was resolved as soon as he came to London, and had done with Mr. Nelthorp, that he would fly into France, and so would cheat the Justices, for he was resolved not to come back to Yorkshire again, but he would commit the design in agitation into such hands as would do it, and would not fail, but he would not stay to see execution.

L. C. J. You heard him say so?

Mr. Bolron. Yes, I did.

L. C. J. What said Sir Thomas?

Mr. Bolron. He commended his son's and Mr. Middleton's resolutions.

L. C. J. What room was it in?

Mr. Bolron. It was in Sir Thomas's own chamber.

L. C. J. Where there any rooms near it?

Mr. Bolron. None that they could hear in, unless in the chamber within, I don't know whether any one was there or no.

L. C. J. Could they hear in no room that was near to them?

Mr. Bolron. Yes, in the chamber within.

L. C. J. Was there no servant there?

Mr. Bolron. Not as I know.

L. C. J.

L. C. J. My reason is, because he must speak very loud to make his father hear him.

Mr. Bolron. Yes, he did, for I heard him in the chamber-window that I stood in against them, they were a little way off me.

L. C. J. Because if any of the servants were near, methinks they must needs be very cautious how they spoke so loud to make Sir Thomas Gascoigne hear.

Mr. Bolron. My Lord, he was not so deaf then as they say he is, and he seems to be now. And Esquire Gascoigne also because he would be sure there should no damage come to him, caused all his goods to be sold off his ground, and Mr. Middleton fold his very household goods.

L. C. J. He is a Papist too, is he not?

Mr. Bolron. Yes, he is so.

L. C. J. Was not he at the meeting with Sir Miles Stapleton?

Mr. Bolron. Yes, Mr. Middleton was one.

L. C. J. You did not name him before.

Mr. Just. Pemberton. But he said a great many were there besides those he nam'd.

Mr. Just. Dolben. Yes he did so. Well go on, Sir.

Mr. Bolron. My Lord, last 30th of May, the day after Holy Thursday, as I remember, being in Sir Thomas Gascoigne's own chamber, Sir Thomas Gascoigne bid me go into the gallery next to the Priest's lodgings, and after a little time one William Rushton, my Confessor, came to me, and asked me, If I was at the last Pontefret sessions? I told him, yes, and that I had taken the Oath of Allegiance, as others had done: Whereupon the said Rushton told me, That I and all the others were damn'd for so doing, if we kept the same; therefore he bid me be sure to come next Sunday to have absolution from him; for it was a damnable sin to take that oath, and he told me, he had power from the Pope to absolve me, and he added, that few Priests had that power that he had.

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L. C. J. Did he make you confess that as a sin to him?

Mr. Bolron. No, my Lord, for I did make the discovery soon after.

L. C. J. When was it you first turned Protestant?

Mr. Bolron. In June, my Lord, after that.

L. C. J. Then you were not a Protestant at that time?

Mr. Bolron. No, my Lord.

L. C. J. Were you a Papist when you took the Oath of Allegiance?

Mr. Bolron. Yes, my Lord, I was.

L. C. J. Why would not you then go and be absolved according as your Priest bid you?

Mr. Bolron. I thought I had done nothing that was evil, because several had taken the oath with me, as you shall hear afterward.

L. C. J. Well, go on.

Mr. Bolron. I told him that several others had done it as well as I, that were Papists, and they judged it lawful, whereupon he said, Away, and told me I was a fool, and knew not how to judge of an oath.

L. C. J. So you were satisfied the Papists might take the oath?

Mr. Bolron. My Lord, I told him I thought it was no sin to take that oath, because it was an oath only to be true to my King and to my country, and I told him that Mr. Ellis, Priest to Mr. Vavasor, had written commentaries upon the oath, and justified the taking of it. Said he again, Mr. Ellis was a fool, and his superiors will call him to an account, and check him for his pains. But said he, by taking the oath you have denied the power of the Pope to absolve you from it, but I tell you he hath a power to depose the King, and had done it: And said he, you will merit Heaven if you will kill him.

L. C. J. Who spoke to you?

Mr. Bolron. Rushton, my Lord, said it was a meritorious act to kill the King.

5 C

L. C. J.

L. C. J. But did Sir Thomas Gascoigne, or any of the company wish you to do that thing?

Mr. Bolron. Not at that meeting, but afterwards Sir Thomas did, my Lord, if you will give me leave to go on.

L. C. J. What did he say?

Mr. Bolron. He told me he would assist me in the act.

L. C. J. Who?

Mr. Bolron. Rushton did; and he told me the Pope had granted him the power, that I should have the benefit of absolution if I would do it. I desired him not to persuade me to do such a thing, for I would have no hand in it; then he quoted a certain place of Scripture to me, which was, "Thou shalt bind their Kings in fetters, and their Princes in chains." Whereupon he concluded, and made this exposition, that the Pope had deposed the King, and absolved all his subjects, and it was a meritorious act to kill the King. And that unless the King would turn Roman Catholic, the Pope would give away his kingdoms to another.

L. C. J. Well, go on.

Mr. Bolron. Then I told him I would have no hand in that act and deed, whereupon he answered me again, you may hang me if you please for speaking these words. No, Sir, said I, I will do you no injury if you do yourself none. So he bid me consider what he said, and come to him again, but I did not.

L. C. J. This was the 30th of May?

Mr. Bolron. Yes, and the same day as soon as I came down, I was told Sir Thomas Gascoigne had left order with his servants that I should not depart the house till he came in, and I stayed there till about six of the clock.

L. C. J. Did not you live with him then?

Mr. Bolron. I lived a little way off the house.

L. C. J. How far?

Mr. Bolron. About a quarter of a mile.

L. C. J. Were you not his servant?

Mr. Bolron. No, my Lord, not at that time.

Mr. Just. Jones. How long had you been gone out of his service before?

Mr. Bolron. I went out of his service about the beginning of July 1678.

Mr. Just. Pemberton. Did Sir Thomas Gascoigne send you into this gallery?

Mr. Bolron. Yes, my Lord.

Mr. Just. Pemberton. And there you found Rushton?

Mr. Bolron. My Lord, he was not there when I came, but he came as it were from chapel.

L. C. J. You were his servant when all the gentlemen met at his house?

Mr. Bolron. Yes, my Lord, I was.

L. C. J. When did you leave his service, say you?

Mr. Bolron. The 1st day of July 1678.

L. C. J. And this was in May 1678, was it not?

Mr. Bolron. No, in (79) my Lord, last May. My Lord, I watched and stayed till he came in, and took him as he came in. I went up stairs with him, and when we came into his chamber he calls me to him, and asked me what discourse had passed between me and Rushton; I told him our discourse was concerning the Oath of Allegiance, and the lawfulness, or unlawfulness of it. Then Sir Thomas Gascoigne took me by the hand, and told me, Well man, if thou wilt undertake a design that I and others have to kill the King, I will give thee 1000l. and I will send thee to my son Thomas, if he be in town, but if he be not in town, he said he would give me such instructions that I should find the rest that were concerned in the business—

L. C. J. The rest, what?

Mr. Bolron. The rest that were in the plot.

L. C. J.

L. C. J. That you should know where to find them in London, you mean so?

Mr. Bolron. Yes, my Lord, if he were gone beyond sea.

L. C. J. What said you to him?

Mr. Bolron. My Lord, I told him I would have no hand in blood, and would not do such a wicked deed, and desired him to persuade me no more. Then he desired me of all love to keep secret what he had said. But afterwards I recollected that it was a very ill thing, and went immediately to the Justices of the Peace.—

L. C. J. How soon did you go?

Mr. Bolron. Soon after.

L. C. J. To whom did you go?

Mr. Bolron. To Mr. Tindal, a Justice of Peace, and to Mr. Normanton.

L. C. J. Did you make an oath there?

Mr. Bolron. Yes, that Sir Thomas promised me 1000*l*.

L. C. J. And for what purpose?

Mr. Bolron. For killing the King.

L. C. J. Did you put that in the oath you made?

Mr. Bolron. Yes, my Lord.

L. C. J. What time was this after the discourse?

Mr. Bolron. It was about a week or such a time.

L. C. J. Was it the next day?

Mr. Bolron. No.

L. C. J. Was it within a fortnight?

Mr. Bolron. Yes, I believe it was, my Lord.

L. C. J. Was it not a month?

Mr. Bolron. No it was not above a fortnight, for Sir Thomas Gascoigne was apprehended in July, or thereabouts, I believe my Lord.

L. C. J. But was that the first time that Sir Thomas ever spake to you to kill the King the 30th of May?

Mr. Bolron. Yes, my Lord.

Mr. Just. Jones. You say you left Sir Thomas's service in July 1678?

Mr. Bolron. Yes, the 1st day of July.

L. C. J. How, did you leave him in good friendship?

Mr. Bolron. Yes, my Lord, in very good friendship.

Mr. Just. Jones. Were you in good correspondence?

Mr. Bolron. I always went to his house to hear mass, and oftentimes was there.

L. C. J. How came you to leave his service?

Mr. Bolron. It was my own fault I left it.

L. C. J. Why, it might be no fault neither. But why did you leave it?

Mr. Bolron. My Lord, it was because there was one Henry Addison, and Bennet Johnson did seek to take my work and service out of my hands. Sir Thomas Gascoigne did desire me to let them come in to see what they could do, and that I should have my salary, and that I should gather in his debts; I was willing to be rid of it, and told him they that looked after the pit should gather in the debts, for I conceived else it would be but a double charge to him.

Mr. Just. Dolben. This is only how he left Sir Thomas his service, Sir Thomas thought the other men could do it better than he, and so said he, then let them do your whole work.

Mr. Just. Jones. But he says he did usually resort to the house after he had left his service to hear mass.

Mr. Just. Dolben. They will ask him some questions, it may be.

L. C. J. Had you any estate of your own when you left Sir Thomas's service?

Mr. Bolron. Yes, I had a farm I rented of Sir Thomas Gascoigne.

L. C. J. What rent?

Mr. Bolron. Fifteen pounds and a mark a year, after I was married.

L. C. J. When were you married?

Mr. Bolron. In July (75). But afterwards I was there, and did still service.

Mr. Att. Gen.

Mr. Att. Gen. I think you have some estate of your own besides that?

Mr. Bolron. Yes, I have 7l. a year.

Mr. Att. Gen. Well, will you for Sir Thomas ask him any questions?

Mr. Babbington. No.

L. C. J. *Mr. Bolron*, pray what did the Justice say to you when you made this oath?

Mr. Bolron. My Lord, thus, I was resolved to come to London, and make my confession here, and desired I might so do, whereupon one of the Justices were unwilling, but at last they said I might do what I would.

L. C. J. You say Justice Tindal it was sworn before, what did he say when you made the oath?

Mr. Bolron. My Lord, as I remember, he said, he must give the council an account of it, and perhaps he should not have an answer of it in a month after, so I thought it was better to come to London, and make a speedy dispatch of the business, for I did not know but the Priests in the mean time might escape.

L. C. J. But did Mr. Tindal do nothing upon that oath that was made?

Mr. Bolron. Yes, he did make out his warrant for the apprehending of one.

L. C. J. Did he not make out a warrant for the apprehending of Sir Thomas Gascoigne?

Mr. Bolron. My Lord, I think they would have done it, but I desired I might come to the council.

Mr. Just. Pemberton. How long after came you there?

Mr. Bolron. As soon as I could get ready.

L. C. J. What time came you thither?

Mr. Bolron. My Lord, I set out upon Monday, and came hither to London upon Wednesday.

L. C. J. Do you know what month it was in?

Mr. Bolron. In June it was, I think.

L. C. J. And who did you come and apply yourself to in London, when you came there?

Mr. Bolron. My Lord, I had a letter directed from Mr. Justice Tindal to his brother Tindal in London, to carry me to the council. I chanced to lose this letter at Ware, and losing it there, I came to the Green Dragon in Bishopsgate-street, I was acquainted with the man of the house, and having told him some of my business, he carried me before Sir Robert Clayton, and then we went to my Lord of Shaftsbury President of the Council, and presently got an order of the Council about me.

L. C. J. How long was this after Dr. Otes's discovery? When did Otes and Bedloe make their discovery?

Mr. Just. Pemberton. This was a long time after, in May last.

Mr. Just. Jones. Did Mr. Tindal take your examination in writing?

Mr. Bolron. He took a short thing in writing.

Mr. Just. Jones. Did you set your hand to it?

Mr. Just. Pemberton. He resolved to go to the Council and tell them.

Mr. Bolron. I was not willing to tell the Justices all, for I had a mind to go to the Council.

Mr. Just. Jones. But you told them the great matter of all, Sir Thomas's proffer to give you 1000l. to kill the King.

Mr. Bolron. Yes.

Mr. Just. Jones. Had you a lease of your farm under Sir Thomas Gascoigne?

Mr. Bolron. It was but a lease parol.

Mr. Just. Jones. For how long?

Mr. Bolron. For nine years.

Mr. Babbington. May I have leave to ask him any questions?

Court. Yes, yes, you may.

Mr. Babbington. You say you had a lease of the farm, a lease parol.

Mr.

Mr. *Bolton*. Yes, I had so.

Mr. *Serj. Maynard*, Counsel must not be allowed in matter of fact, my Lord.

L. C. J. But, brother, this man hath made a long narrative.

Mr. *Serj. Maynard*. Ay, and a shrew'd one too.

L. C. J. His evidence is very great, and Sir Thomas Gascoigne does not hear any one word.

Mr. *Bolton*. One thing more I would speak to. It was in September 1678, a little before the discovery of the plot, I did hear Sir Thomas Gascoigne say, and tell my Lady Tempest, that he would send 150*l.* to Dolebank in hopes the blow would be given shortly.

Mr. *Serj. Maynard*. That is the same word used by all the witnesses.

L. C. J. When was this?

Mr. *Bolton*. In September 78; the plot was not known by us to be discovered then, as I know of.

L. C. J. Who did he speak it to?

Mr. *Bolton*. To his daughter, the Lady Tempest.

L. C. J. What said she?

Mr. *Bolton*. She seem'd to like it very well, I did not hear any thing to the contrary: and I heard a letter read afterwards from Cornwallis, that he had receiv'd it, but it was too little for the carrying on so great a design.

L. C. J. Who is Cornwallis?

Mr. *Bolton*. And it was for the arming the poor Catholics when the blow should be given.

L. C. J. Is his daughter living?

Mr. *At. Gen.* Yes, she is out under bail.

Mr. *Recorder*. My Lord, I shall desire to ask but one question, which concerns the prisoner at the bar: how long after the discourse that you had with the priest in the gallery, was it that Sir T. Gascoigne spoke to you of the same thing?

Mr. *Just. Pemberton*. Mr. *Recorder*, if you ask him but one question; let it not be that which he hath answer'd before; he says the same day.

Mr. *Hobart*. I desire to ask him one question.

Mr. *Just. Pemberton*. No, tell Sir Thomas first what he hath said, and see if he will ask any questions.

Mr. *Hobart*. Sir Thomas, here is Mr. *Bolton*. hath given evidence against you, will you ask him any questions?

Mr. *Just. Pemberton*. Read your minutes to him.

Then Mr. *Hobart* repeated the first part, about his coming to Sir T. Gascoigne's service, and the Colliery Conveyance.

Mr. *Just. Jones*. Ask him if he will ask any questions upon this part. [which he did.]

Sir T. *Gasc.* No, 'tis no great matter at all, for it is true; when 'twas I can't tell, there was something I did seal to Sir William Ingleby, and some money I had of him.

Then Mr. *Hobart* repeated his saying to Metcalfe, he would send 300*l.* to the priests in 76.

Sir T. *Gasc.* How comes that, I deny that utterly.

Mr. *Bolton*. 'Tis all true that I have said by the oath that I have taken.

Sir T. *Gasc.* There is no such thing at all.

Mr. *Hobart*. He says it was return'd by Mr. *Phiswick*.

Sir T. *Gasc.* *Phiswick* was a servant to me, and return'd some money for me sometimes; but it was all for my children, my sons, and my daughters, and my kinspeople, to whom I paid annuities, but it was a far greater sum the whole than 300*l.* and for one great sum of 100*l.* you know how it was dispos'd of.

Mr. *Hobart*. He says, that in the beginning of 77, you said you had return'd this 300*l.* to London, and if you had a thousand

thousand times as much, you would give it for so good a cause.

Sir T. Gasc. I never said any such thing, never thought of any such thing in my life.

L. C. J. Now tell him of the meeting at Barmbow.

Mr. Hobart. He says, in the year '77 there were several gentlemen met at your house at Barmbow.

L. C. J. Name them. [Which he did]

Mr. Hobart. These were all together with you.

Sir T. Gasc. No such matter at all.

Mr. Hobart. And he said all these persons did discourse with you about the establishing a nunnery at Dolebank, and another at Heworth, and another at Broughton.

Sir T. Gasc. Not one word of all this is true.

L. C. J. Tell him what he said concerning killing the King.

Mr. Hobart. He says that the nunnery was establish'd at Dolebank, and such and such were nuns.

Sir T. Gasc. He may say what he will, but not one word of all this is true.

Mr. Just. Dolben. But you skip over the main thing, what the gentleman resolv'd upon at that meeting.

Mr. Hobart. He says, these gentlemen did resolve the business should go on for the killing of the King, and that they would venture their lives and estates for it.

Sir T. Gasc. I never heard of any such thing as killing the King; Sir, did I ever say any such thing?

Mr. Bolron. It was in your own dining-room, and in your own chamber.

Mr. Just. Pemberton. He did not say so, I think, about their meeting.

L. C. J. Yes, he says they all met at his house, and there they had discourse of killing the King. In what room was it?

Mr. Bolron. In the old dining-room,

Sir T. Gasc. I deny it utterly; there was no such thing: some persons might be at several times at my house, but no such meeting, nor words at all at one time or other.

Then *Mr. Hobart* told him of *Mr. Gascoigne's* and *Mr. Middleton's* licenses to go to London, and intention to go to France.

Sir T. Gasc. 'Tis very true, my son did go to London for that end.

Mr. Hobart. And so *Mr. Middleton*, upon pretence of receiving rent.

Sir T. Gasc. I cannot tell about *Mr. Middleton*.

Mr. Hobart. He says, your son would immediately fly into France, and commit the design into other hands; and you said you approv'd of it, and this he heard you discourse very plainly.

Sir T. Gasc. But I plainly deny it all.

Mr. Hobart. He says you bid him go up (the 30th of May) to the gallery to *Mr. Rushton*.

L. C. J. No, not to him, but when he was in the gallery, *Rushton* came to him.

Then *Mr. Hobart* repeated the discourse with *Rushton* about the oath of allegiance.

L. C. J. You need not tell him what *Rushton* said.

Mr. Just. Dolben. Yes, my Lord, it is convenient.

Mr. Bolron. For I told him our discourse about the oath of allegiance my self.

Then *Hobart* repeated *Sir Thomas's* further discourse and proffer to him.

Sir T. Gasc. There is nothing of all this true: he might come there and talk with any body, for what I know, but I was not with him.

L. C. J. But ask him what he says to this, that he proffered him 1000*l.* to kill the King? [Which he did.]

Sir T. Gasc. Where should you be paid it?

Mr.

Mr. Bolron. I would not undertake the design.

Sir T. Gasc. Did you ever know I was master of 200*l.* together in my life?

Mr. Bolron. Yes.

L. C. J. Tell him, he says he would not undertake it, and therefore it was in vain to appoint where.

Sir T. Gasc. I utterly deny it all, upon my life; that's e'en just like the rest, I never heard it before.

L. C. J. He puts it to you, Whether ever you saw him have 200*l.* together?

Mr. Bolron. I have seen 500*l.* at a time in the house, and I have seen in Philwick's hand 700*l.* [Which was repeated to him.]

Sir T. Gasc. What Philwick might have of other mens monies I do not know, he never had so much money of mine.

Mr. Bolron. My Lord, Sir T. Gascoigne I believe had at that time at least 1200*l.* a year of his own estate. [Which was repeated to him.]

Sir T. Gasc. I wish he would make it good.

Mr. Bolron. My Lord, 'tis true enough, I believe he had settled some estate upon his son, about 600*l.* a year.

L. C. J. I can't tell what becomes of the Papists estates, nor how the Priests drain them, but there are men of very great estates among them, but they are greatly in debt.

Mr. Hobart. Will you ask Mr. Bolron any questions?

Mr. Just. Jones. You have not repeated to him one part of the evidence; That in September 78, he said to my Lady Tempest, he would send 150*l.* to Dolebank, in hopes the blow would be given shortly. [Which was then repeated.]

Sir T. Gasc. I know no such thing at all; there is not one word of all this true.

Mr. Hobart. Will you ask him any questions or no?

Sir T. Gasc. I know not what questions to ask, but where the money should be paid?

L. C. J. That can be no question, for the thing was never undertaken.

Mr. Att. Gen. Then pray, Mr. Mowbray, tell your knowledge.

Mr. Mowbray. My Lord, and you Gentlemen of the Jury, I came to Sir Thomas Gascoigne's in the beginning of the year 1674.

L. C. J. Were you his servant?

Mr. Mowbray. Yes, my Lord, but never an hired servant.

L. C. J. In what quality did you serve him.

Mr. Mowbray. In his chamber, my Lord, and continued with Sir Thomas until 76, in which time I did observe Mr. Thomas Addison, a Priest, Fincham, a Priest, Stapleton, a Priest, Killingbeck, a Priest, and Thwing the elder and the younger several times to visit and confer with Mr. William Rushton, Sir T. Gascoigne's Confessor.

L. C. J. Were you a Papist then?

Mr. Mowbray. Yes, I was.

L. C. J. Are you one now?

Mr. Mowbray. No.

L. C. J. Well, go on then.

Mr. Mowbray. I being very diligent in attending Mr. Rushton at the altar, I became in great favour with him, and was permitted to be in the chamber when the Priests were in private with him, and I heard them often talk and discourse of a design laid for setting the Popish religion uppermost in England, and how like the same was to take effect in a short time.

L. C. J. Who did speak it?

Mr. Mowbray. The Priests in private with Mr. Rushton: I speak now, my Lord, of the plot in general, I come to Sir T. Gascoigne anon.

L. C. J. When? In what year was this discourse?

Mr. Mowbray. In 1676.

L. C. J.

L. C. J. Well, what said they?

Mr. Mowbray. Why they discoursed concerning the setting up the Popish religion in England; and how like the same was to take effect, and succeed, in regard that most of the considerable Papists in England had engaged to act for it, and if it could not be done by fair means, force must be used; and particularly declared, That London and York were to be fired.

L. C. J. In 76?

Mr. Mowbray. Yes.

L. C. J. What? Would they fire it again?

Mr. Mowbray. And I heard them often say, That the King in exile had promised them——

L. C. J. Did they say the city was to be fired a second time?

Mr. Mowbray. Yes, to further their intention.

Mr. Serj. Maynard. It was effected in Southwark.

Mr. Mowbray. And they did also declare, That the King, when he was in his exile, had promised the Jesuits beyond sea to establish their religion whenever he was restored; which they now despaired of, and therefore he was adjudg'd an heretick, and was to be killed.

L. C. J. Who did say this?

Mr. Mowbray. The Priests.

L. C. J. Who was the heretick?

Mr. Mowbray. The King. Also I did hear Mr. William Rushton tell Addison and the rest of the Priests——

It was Rushton, Rushton and Addison were together, and he did declare to Mr. Addison, that according to agreement, he had given the oath of secrecy and the sacrament to Sir T. Gascoigne, Esquire Gascoigne his son, my Lady Tempest his daughter, Mr. Stephen Tempest, and had communicated the whole design to them.

L. C. J. Were you by when he said this?

Mr. Mowbray. Yes, in his chamber.

L. C. J. How long after the discourse of the Priests was this?

Mr. Mowbray. My Lord, he told them he had done it according to agreement before; and they did approve of it, and had severally engaged to be active, faithful and secret, and would do to the utmost of their powers, as far as their estates would permit, to establish the Roman Catholic religion in England: And about Michaelmas, 1676 there was another meeting of these Priests, and others, where they declared, That the King was an heretic, and that the Pope had excommunicated him and all other heretics, in England, Scotland and Ireland, and that force was to be made use of.

Just. Dolben. When was that, Sir?

Mowbray. About Michaelmas 1676.

Just. Jones. You were his servant then?

Mowbray. Yes, my Lord: And then did Rushton produce a list of names, of about four or five hundred, and he read them over, all of whom, he said, were engaged in the design, and he did read the names of Sir T. Gascoigne, T Gascoigne, Esq; my Lady Tempest, Mr. Vavafor, Sir Francis Hungatt, Sir J. Savile, the two Townley's, Mr. Sherborne, and others.

L. C. J. Did you see this list?

Mowbray. I saw several subscriptions to it; and among the rest I saw Sir T. Gascoigne's own hand.

L. C. J. Do you know it?

Mowbray. Yes, very well.

L. C. J. And upon the oath you have taken, do you believe that was his hand to the list?

Mowbray. Yes, my Lord, I do believe it was his hand.

L. C. J. Did you know any other hands? Do you not know his son's hand?

Mr. Mowbray. No, nor any but Sir T. Gascoigne's.

L. C. J.

L. C. J. It was in several hands, was it not?

Mowbray. Yes, it seemed to me to be so.

L. C. J. What did they subscribe to do?

Mr. Just. Pemberton. This was in 77?

Mowbray. No, it was about Michaelmas, 1676.

L. C. J. What was it for?

Mowbray. The title of it was, as I remember, "A List of them that are engaged in the Design of killing the King, and promoting the Catholic Religion."

L. C. J. Was that writ on the top?

Mr. Just. Pemberton. They were words, I suppose, to that effect.

Mowbray. Yes, it was to that effect, my Lord.

L. C. J. Was it mentioned in the list, for "killing the King?"

Mowbray. Yes: And then they declared also, That the Pope had given commission to put on the design, and prosecute it as quick as they could; and that he had given a plenary indulgence of ten thousand years for all those that should act, either in person or estate, for killing the King and setting up the Romish religion in England, besides a pardon and other gratifications: And so much as to the plot in general. Now, my Lord, I come to the particulars, as to the prisoner at the bar, Sir T. Gascoigne. About Michaelmas, 1676, much about that time, there was Sir T. Gascoigne and his son, my Lady Tempest, and Rushton the Priest together; where, I heard them hold several discourses of this design about killing the King, and firing the cities of London and York; and Sir T. Gascoigne did declare and assure Mr. Rushton, that he would not swerve from what he had said, but would keep to the oath of secrecy he had given him, and that he would do to the uttermost of his power for the killing the King, and the establishment of Popery.

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L. C. J. Were you in the room?

Mowbray. I stood close at the door, where I heard very well, the door was not quite shut.

L. C. J. They did not know you were there?

Mowbray. No.

L. C. J. They would not trust you with it then?

Mowbray. They did not know I was there. And they did unanimously conclude, That it was a meritorious undertaking, and for the good of the church, and they would all venture their lives and estates in it.

L. C. J. Rushton was there, was he not?

Mowbray. Yes, Rushton was there; and Dr. Stapleton, a Priest, coming from another door, and finding me at the door, went in and desired them to speak lower, for there was one at the door: Whereupon my Lady Tempest called me in, and ordered me to go below and entertain some strangers: So much for the particulars concerning Sir T. Gascoigne.

Mr. Just. Pemberton. Was Sir Miles Stapleton there at that time?

Mowbray. Yes, he was there.

L. C. J. Where?

Mowbray. In an upper room.

L. C. J. Who were by?

Mowbray. Mr. Gascoigne, and the Priest, and my Lady Tempest.

L. C. J. This is all you say?

Mowbray. Yes, so far as to the particulars of this matter.

Mr. Serj. Maynard. Have you any more to say.

Mowbray. No, no more but these particulars, unless some questions be asked.

Then Hobart began to repeat this evidence to Sir T. Gascoigne, how he came to be his servant.

Sir T. Gas. He came as a boy to me without hiring.

Then

Then Mr. Hobart repeated the Priest's discourse at Rushton's.

Sir T. Gasc. I deny it all.

L. C. J. He was not present, this was a discourse among themselves.

Then Hobart told him about the oath of secrecy, and the sacrament.

Sir T. Gasc. No, there is no such thing, there is not a word of it true.

L. C. J. Then tell him of the list. [Which was done.

Sir T. Gasc. 'Tis a most impudent lie.

Mr. Hobart. What say you to your hand being to that list?

Sir T. Gasc. Not one word of it.

Mr. Hobart. But he says 'twas your name to it.

Sir T. Gasc. He had a pair of spectacles on sure that could see any thing: Was it a printed list, or a written one?

Mowbray. It was written, your name was put to it, with your own hand-writing. [Which was told him.

Sir T. Gasc. He makes what he will.

Then Mr. Hobart repeated Rushton's declaring that he had given him the sacrament of secrecy.

Sir T. Gasc. I'll warrant you he hath gotten this oath of secrecy out of the news-books; for I never heard of it before: Let me ask thee: Didst thou ever hear it before you came to London?

Mowbray. Yes, Sir Thomas, I did.

Mr. Hobart. But will you ask him any question?

Sir T. Gasc. No; it is all false he speaks, not a word of truth comes out of his mouth.

Mr. Serj. Maynard. My Lord, we will now go on to another piece of our evidence.

Sir T. Gasc. I must leave it to the jury to take notice of their conversations and mine.

Mr. Serj. Maynard. Whereas he says he was never owner of 200l. together, we will produce his own almanack under his own hand.

L. C. J. Do it, and we will shew it him, and see what he says to it.

Sir T. Gasc. Why did he not discover it before?

Mr. Hobart. If your Lordship please, Sir Thomas desires he may be asked, Why he did not discover it before?

Mowbray. Because the Papists did threaten me at such a rate, and I being a single person against them, durst not.

L. C. J. When did you first discover it?

Mowbray. It was about Michaelmas last: The Papists did threaten me, that if I did discover it they would take my life away.

L. C. J. When did you turn Protestant?

Mowbray. When the plot broke out, then I took the oaths of Allegiance and Supremacy.

L. C. J. Why did you not discover it as soon as you turned Protestant?

Mowbray. My Lord, I was not in a condition to make any friends, or come up to London upon such an account: Besides, my Lord, they did threaten me, and particularly after the plot was come out; Addison did threaten me.

L. C. J. But this was a great while before the plot broke out.

Mr. Just. Dolben. So long he continued a Papist, and then he would not discover.

Mowbray. This Addison was often with me, and he flattered me, and made me continue a Papist, lest I should discover it.

L. C. J. Where is he now?

Mowbray. He is fled.

L. C. J. What said Addison when you did turn Protestant?

Mowbray. He said if I did discover, he would take away my life.

L. C. J. I wonder they did not give you the oath of secrecy.

Mowbray. Yes, my Lord, I did receive it from Rushton's own hand.

L. C. J. When?

Mowbray. In 76.

L. C. J. Who received it with you?

Mowbray.

Mowbray. It was given to me after the communicants were gone from the chapel.

L. C. J. What was the oath?

Mowbray. He reserved the sacrament for me, and swore me by it, that I should be faithful and secret, and should not reveal any discourse I was privy to.

L. C. J. Reveal no discourse; what discourse did they mean?

Mowbray. Those discourses when the Priests were in private with him.

Then Sir T. Gascoigne's Almanack was produced.

Mr. Att. Gen. Who proves Sir Thomas's hand? Is this Sir T. Gascoigne's hand?

Bolton and Mowbray. Yes, it is his hand.

L. C. J. Shew it him himself. [Which was done.]

Mr. Hobart. Is that your hand?

Sir T. Gasco. Yes, I think I saw it at the Council-table; this is my writing, and I will justify every word that is written there.

Mr. Att. Gen. Read that one place.

Clerk. The 15th to Peter for 100l. to Corker.

Mr. Att. Gen. If your Lordship please, I desire he may be asked what that 100l. was for.

Mr. Hobart. Look you here, Sir, did you order 100l. to be paid to Corker?

Sir T. Gasco. It may be I did.

Mr. Hobart. What was it for?

Sir T. Gasco. For the portion of a child I had.

Mr. Hobart. What child was that?

Sir T. Gasco. I know not who it was, Mary Appleby, I think.

Mr. Att. Gen. Pray ask him how it came to Corker's hands? Why it was returned to Corker?

Sir T. Gasco. I know not that, because we did not know where she lived, she was beyond sea.

Mr. Hobart. Where is she?

Sir T. Gasco. She is at Paris.

Mr. Att. Gen. Here is another book of his that does make mention of 900l. to Mr. Corker, upon agreement between them.

L. C. J. Ask him how much money he might return to Corker from time to time. [Which was done.]

Sir T. Gasco. My Lord, I don't know, we have been several years returning of money.

L. C. J. Hath he returned 8 or 900l. in all?

Sir T. Gasco. No, I don't think so much.

Mr. Att. Gen. Pray ask him how much was Mrs. Appleby's portion?

Sir T. Gasco. Indeed I can't certainly say; but as the rents came in I was to pay several sums to several persons, it was 100l. a year to that Mary Appleby, it may be 2000l. in all from first to last, but I shall satisfy you about that.

Mr. Att. Gen. Will you satisfy us anon why 900l. was paid in one year.

Then the book was shewn to Sir Thomas, who owned it to be his hand.

L. C. J. Read it.

Clerk. Q. Of Mr. Corker what bills, for how much, and to whom directed, he hath received of me since the 21st of July, 1677, to June, 1678. vid. the book, p. 45. and the great book, fol. 54. where you may find P. for 900l. and agree in this accompt, Corker, the 7th of August, 1678.

Mr. Att. Gen. First he makes a *Quere*, how much he returned, and then says he, the 7th of August I and Corker agreed.

L. C. J. Let him read it himself. [which he did.]

Mr. Hobart. What say you to that, that you sent so much money to Corker?

Mr. Just. Pemberton. You must understand he is one of the Priests, and Bolton swears, that he intended to send 2000l. and by 300l. a piece, he reckons up 900l.

Sir T. Gasco. It was a great many years, and several times.

L. C. J. Tell him it was between July 77, and June 78.

Sir T. Gasco. That does not appear.

Mr. Att. Gen. Yes, it does, by the book.

Mr. Just.

Mr. Just. *Dolben*. Then how came you to return 900*l.* in one year to Corker?

Mr. Serj. *Maynard*. And never had 200*l.* he says together.

Mr. *Att. Gen.* Then here is another passage in this book, if it please your Lordship to have it read.

Clerk. Take Heworth at an easy rent of widow—and purchase the reversion of Craddock—and in the interim Dawson.

Mr. Just. *Dolben*. Ask him what he did mean by taking of Heworth?

Sir T. *Gasc*. I took no house there.

Mr. Just. *Dolben*. But he did agree to buy the reversion of it.

Sir T. *Gasc*. It was for my niece Thwing. She was born in the house, and was very desirous to be in the house.

Mr. Just. *Dolben*. Ay: But why did he take the lease of the widow, during her jointure, and why buy the reversion?

Sir T. *Gascoigne*. I know no reason but my affection to her.

Mr. *Att. Gen.* Ask him who he did intend should live in the house?

Sir T. *Gasc*. Nay, I don't know what they intended my niece Thwing.

Mr. Just. *Dolben*. Did you intend to buy it for yourself?

Sir T. *Gasc*. No, I lent her the money.

Mr. Just. *Dolben*. Did you intend it for her?

Sir T. *Gasc*. I might do with it what I would.

Mr. *Att. Gen.* Ask him if his niece Thwing was a single woman, and was to have the whole house to herself?

Sir T. *Gasc*. She had her brother with her.

Mr. *Hobart*. He says Mrs. Ellen Thwing was a nun, Mrs. Lassels was to be Lady Abbess, Mrs. Beckwith was her assistant, and Mrs. Cornwallis and others were nuns.

L. C. J. Ask him if Mrs. Lassels was not to be Lady Abbess and live there?

Sir T. *Gasc*. I know nothing of it.

Mr. *Att. Gen.* Ask him if there was not one Mrs. Benningfield to be there?

Sir T. *Gasc*. No.

Mr. *Bolton*. Yes, she was to be there.

Mr. Just. *Jones*. Why, do you know any thing of her?

Mr. *Att. Gen.* She is in York goal.

Mr. *Bolton*. No, she is gone from thence. My Lord, Ellen Thwing was a nun, and was sent for from beyond sea to instruct all them that should be made nuns, and this Father Cornwallis was Father Confessor to the nuns. He is now in York goal, taken with two women.

Mr. Just. *Jones*. Ask him what he meant by that writing in the Almanack?

Sir T. *Gasc*. I did write things here for a memorandum to help and assist my niece, and the poor children of my brother; and so the widow that was Sir Walter Vavasor's sister, was to sell the house, and one Craddock meant to sell all the Lordship; and the children were desirous to keep the house, and so they bought the house and one close, and all the rest was sold; so I writ it only that they should have the assistance of Sir Walter Vavasor to have the house.

Mr. Just. *Dolben*. Pray ask him what he means by the words, "in the interim Dawson."

Sir T. *Gasc*. Nay, what do I know.

L. C. J. Ask if Mrs. Thwing were not a nun?

Sir T. *Gasc*. They did desire if they could not get that house, they might have an other house.

Mr. Just. *Dolben*. And all this for Mrs. Thwing. Ask him if she was not beyond sea, and kept in a nunnery?

Sir T. *Gasc*. Nay, I can't tell what she was.

Mr. *Att. Gen.* Here is another note in this Almanack, pray read it. It was first shewed to Sir T. Gascoigne, who owned it to be his hand.

Clerk.

Clerk. Mr. Harcourt, next house to the arch within Lincoln's Inn-Fields, Mr. Parr's.

L. C. J. No question but he was acquainted with all the Priests about the town, and had directions to write to them.

Mr. Just. Pemberton. He hath been Priest-ridden by them, that is plain.

Mr. Recorder. Ask him what he means by the last mark there set under London?

Sir T. Gasc. I can't tell what it is, 'tis a query.

Mr. Att. Gen. In the Almanack there is a memorandum to acquaint Mr. Thwing with the whole design, what it was I can't tell.

L. C. J. Ay, Pray let's see that.

Mr. Att. Gen. This Thwing is a Priest, in Newgate at this time.

Clerk. The 15th of April 1676. memorandum. Acquaint Mr. Thomas Thwing with the whole design.

L. C. J. Now shew him that.

Sir T. Gasc. Look you, what is it you would have?

Mr. Hobart. What design was that?

Sir T. Gasc. It was my providing monies for him and his sister, that they should tell how to purchase the house.

Mr. Att. Gen. What, a Priest and a Nun?

Mr. Just. Dolben. They had vow'd contrary to that.

Mr. Just. Pemberton. Ask him whether Thwing be not a Priest?

Mr. Hobart. Is this Thwing not a Priest? Thomas Thwing?

Sir T. Gasc. No, it was Ferdinando Thwing, that is now dead.

Mr. Att. Gen. No, but this is Thomas Thwing: Is he a Priest?

Sir T. Gasc. I do not know, what have I to do.

L. C. J. Then consider how likely it was, he was to purchase an house for a Priest
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and a Nun, for some such business as is sworn.

Mr. Hobart. He says no, my Lord.

L. C. J. What is the meaning of it then, that he should name the whole design?

Mr. Hobart. He says it was the brothers and sisters that lived next door to him.

L. C. J. Ay, but 'tis said, Acquaint Thomas Thwing with the whole design.

Mr. Hobart. He might acquaint Thomas Thwing with such his intention.

Mr. Att. Gen. We will now shew your Lordship a letter, taken among the papers of Sir Thomas Gascoigne, wherein is this proviso, talking of the settlement, "In the formal settlement, let this proviso be added, If England were converted, then to be disposed so and so."

L. C. J. Mr. Bolron, how came you by that paper?

Mr. Bolron. I took this paper in Sir Thomas Gascoigne's Chamber, with several others, I remember some had his hand to them, others had not, and some were signed Pracid, and some Cornwallis.

L. C. J. Is there any mark of his hand to that paper?

Mr. Att. Gen. Yes, there is a mark in this, of Sir Thomas's own hand, the word (Yes) in the Margent.

Clerk. Dolebank, June the 9th, 78:

Most Honoured Sir,

AFTER most grateful acknowledgements of all your charitable favours, as to my own particular; I am also herewith to present most humble and heartiest thanks on behalf of your niece, and Mrs. Hastings here, who both would esteem it a great happiness to see you, here, as also my lady, your honoured daughter, to whom we beseech our humble respects may be presented. I have sent the paper safely to good Mrs. Beddingfield, from whom shortly you will have

have religious acknowledgments. I told her, that I supposed you would judge fitting to insert into the formal writing the proviso, viz. That if England be converted, then the whole gol. per annum is to be applied here in Yorkshire, about, or at Heworth, &c. The which, doubtless, will be acceptable unto her, and as much to God's glory as possibly can be imagined. Now, dearest Sir, let me not be too much troublesome, save only to wish you from his Divine Majesty, for whose everlasting glories greater praise and honour you do this most pious action, the happy enjoyment of that glory everlasting. I would lastly advise you in God's holy name, to compleat the business by drawing the formal writing as soon as possible; and with-
Y E S. out making any material alteration from what you have already signed, save only the proviso above written. I should be glad to know concerning the receipt hereof; and when Sir Miles and your son are likely to attend you to finish the business: As also when Mr. Pierpoint shall be arrived. These good religious are very desirous with your approbation (and Mrs. Bed. at my coming from her wished the same) to try for a removal to Mr. Dawson's; the impediments here being essential, as the house incapable to receive more scholars, with many other inconveniences also. Time permits no more, only we again express our earnest desires to see your honour here with my lady, as the greatest satisfaction we can desire: I remember you hinted to Mrs. Bedding. not long since, that perhaps you might see her at Hammersmith, and how much easier you may come hither, we earnestly beseech you to take into consideration to the purpose.

Most honoured Sir,

Your honour's most obliged

faithful servant,

JO. PRACID.

L. C. J. I think 'tis pretty plain, there was a design of erecting a nunnery.

Mr. Serj. Maynard. If England is converted then the whole gol. a year to be employed in Yorkshire about a rotten house, which would be much for God's glory.

L. C. J. What other evidence have you?

Mr. Recorder. If your Lordship please, we have another letter dated from York Castle, and the backside of the letter is indorsed by Sir Tho. Gascoigne's own hand, the time when he received it.

L. C. J. When was it?

Mr. Recorder. The last May, he dates it from York Castle, where he was in prison, and therein gives Sir Thomas an account of the opinion of the Doctors of Sorbonne about the taking the Oath of Allegiance.

L. C. J. No doubt all of them do not approve of it.

Mr. Just. Dolben. As I believe this same Pracid was the occasion of so many gentlemen refusing the Oath of Allegiance, I convicted above forty of them in that country for not taking of it.

Mr. Serj. Maynard. *Noscitur ex comite.* You see if this be the effect of it, what reason we have to rid ourselves of these Priests. One that dares write such a letter, and 'tis found in Sir Thomas's study.

Mr. Just. Pemberton. And Sir Thomas's own hand on the back of it.

Mr. Serj. Maynard. My Lord, under favour, I do take it, that the debauching of men in point of conscience, that they may not take the Oath of Allegiance, is to set them loose from the government, and loose from the King, and make them ready to arm when they have opportunity.

Mr. Just. Pemberton. No doubt of it, brother.

L. C. J. All the Jesuits say they may not take it, but some of the Sorbonnists say they may.

Mr. Just. Pemberton. But now you see they are against it.

L. C. J.

L. C. J. Some will, and some will not allow it.

Mr. Just. Jones. They take or leave oaths as it is convenient for them.

Then the letter being shewn to Mr. Mowbray, and the indorsement acknowledged to be Sir Thomas's hand, was read.

Clerk. York Castle, May the 24th.

Honoured and ever dearest Sir,

LONGER time having passed since your last writing, it is fit to inform you how God's holy Providence disposes concerning us. All the out-prisoners being called into the castle, (as you may have heard) Mrs. Hastings's room was needed, and so she went into Castlegate to reside at the former lodging of one Mrs. Wait, (who is now in the gaol) where she remains with Mrs. Wait's two children and their maid-servant, teaching the children, as formerly; also the Moor's niece goes daily thither; and Mrs. Hastings lives without charge as to diet and lodging, as I formerly told you; she spends all her time well, God be praised, and comes every morning about seven o'clock to serve God at the Castle: But I and two others are much abridged of that happiness by her room being left by her here. My liberty of going abroad is restrained with the rest, none being as yet permitted the least, since these last were forced to come in. Madam — was here the other day, and seemed somewhat timorous about Mrs. Hastings's teaching: But most in the castle persuaded her, that it was most commendable and most secure, and so she rests satisfied: Mrs. Cornwallis is recovered of her ague, God be blessed: She desires her dutiful respects may be always presented unto you, and intends herself to write to you. Mrs. Wood and her companion are well, but dare not as yet walk in their own garden. All our now

prisoners are chearful, and each of us comforted, in hopes that God will make all Catholics of one mind: For I have a letter from our [Mr. *Record.* That is Superior.] Spr. at London, (who was the same day taken and carried to prison) wherein he declares, alledging authority, That the pretended Oath of Allegiance cannot be taken, as it is worded, adding, that three briefs have formerly been sent from the Pope, expressly prohibiting it; and in the third, it is declared damnable to take it. And yesterday we had a letter communicated amongst us, sent by Mr. Middleton (now at Paris) to his friends here, containing the attestation of all the Sorbon Doctors against it; adding, that whosoever here in England give leave, they deceive people, and are contrary to the whole Catholic church. There was also a meeting some years ago, of all the superiors both secular and regular, wherein it was unanimously declared, that it could not be taken: Mr. Hutchison (alias Berry) who has lately printed a pamphlet in defence of the oaths, has the other day declared himself Protestant at St. Margaret's Westminster. And so I rest,

Honoured Sir,

Your ever obliged

J. P.

Mr. Recorder. That is all, the other is private.

Mr. Att. Gen. If your Lordship please, we shall now prove by some witnesses, that he hath returned great sums of money, because he said he never had 200l. together; and for this we call Mr. Phiswick; (Who was sworn.) Come Sir, were you a servant to Sir Tho. Gascoigne?

Mr. Phiswick. Yes.

Mr. Att. Gen. For how long time?

Mr. Phiswick. For six years and upwards.

Mr. Att. Gen. In that six years time what sums of money did you return to London?

Mr. Phiswick.

Mr. *Pbifwick*. 'Tis abstracted in a note.

Mr. *Att. Gen.* Did you return all the sums in that note?

Mr. *Pbifwick*. I refer myself to my Almanack.

Mr. *Att. Gen.* Did you set down this account?

Mr. *Pbifwick*. Yes, Sir?

Mr. *Att. Gen.* Then thus, Sir, pray what comes it to?

Mr. *Pbifwick*. Those sums do come to 6128l.

L. C. J. Whose money was that?

Mr. *Pbifwick*. Part of it was Sir Thomas's, part his son's, and part my Lady Tempest's.

L. C. J. Can you tell how much in any one year you returned upon the account of Sir Thomas?

Mr. *Pbifwick*. Not unless I had my Almanack.

L. C. J. It will be endless to look over the particulars.

Mr. *Just. Pemberton*. Can you make any estimate in six years how much you returned for Sir Thomas himself?

Mr. *Pbifwick*. No, not without my Almanack, because I returned money for them all.

Mr. *Att. Gen.* My Lady Tempest and Mr. Gascoigne, it hath been proved, were in all the discourses.

L. C. J. But that hath not any influence upon Sir Thomas.

Mr. *Pbifwick*. The Esquire lived much in London.

Mr. *Just. Dolben*. What estate had he to live upon?

Mr. *Pbifwick*. Betwixt 4 and 500l. a year.

Mr. *Just. Pemberton*. What estate had Sir Thomas besides?

Mr. *Mowbray*. My Lord, I believe it was 1600l. a year, besides what Mr. Gascoigne had.

Mr. *Just. Dolben*. And what had my Lady Tempest?

Mr. *Pbifwick*. Three hundred pounds a year.

Mr. *Just. Dolben*. But she lived in Yorkshire?

Mr. *Pbifwick*. Yes.

Mr. *Just. Dolben*. So she needed little returns to London?

Mr. *Just. Pemberton*. But admit they had returned all, yet there was 300l. a year to be returned for Sir Thomas.

Mr. *Att. Gen.* My Lord, here is Mr. Mawson, I think 2500l. was received by him.

Mr. *Pbifwick*. I paid in the country, at Leeds, money, that he paid here in town.

Mr. *Att. Gen.* Here is the 25l. paid to Harcourt, I would ask him whether it were the same Harcourt that was executed?

Mr. *Just. Pemberton*. I think that not material.

Mr. *Att. Gen.* My Lord, if you please we will shew you the examination taken before the Council, that Sir Thomas did own this Bolron had been his servant, and never unfaithful, but always took him to be, as he now found him, a fool.

Mr. *Just. Dolben*. If he object any thing, it will come in properly by way of reply.

Mr. *Att. Gen.* Then now we have done till we hear what the prisoner says to it.

L. C. J. Tell him they have done with their evidence against him, if he will have any witnesses examined, he must call them.

Mr. *Hobart*. The King's evidence have been all heard, and said as much as they can, the court asks you if you would call any witnesses, or say any thing for yourself? Have you any witnesses here?

Sir T. Gascoigne. Yes.

Mr. *Hobart*. Name them, Sir.

Mr. *Just. Dolben*. Ask what he will have done with them?

Mr. *Just. Jones*. Let him tell us to what purpose he will call them.

Sir T. Gascoigne. To examine them to the credit, and demeanour of these men, and that there is no probability in their suggestions.

Mr. *Hobart*.

Hobart. Name them, Sir

Sir T. Gasf. They are all in that note.

Mr. Babbington was first examined.

Just. Pemberton. Ask Sir Thomas what he would have him asked.

Sir T. Gasf. Look you, Sir, what do you know concerning the difference between Mr. Bolron and I?

L. C. J. Well, what say you to that question?

Babbington. My Lord, I have not been employed in Sir Thomas Gascoigne's business before the last winter.

Just. Dolben. What do you know then?

Babbington. About spring last Sir Thomas Gascoigne was consulting with me about money Bolron owed him upon two bonds, and gave me directions to sue them. And likewise he was giving me directions to deliver declarations in ejectment for gaining the possession of his farm, because he did not pay his rent.—

L. C. J. How much were the bonds for?

Babbington. I have them here I think.

L. C. J. You need not look for them, you may tell us the sums.

Babbington. The one is for twenty-eight pounds, the other twenty, to the best of my remembrance. Mr. Bolron having notice of this, did desire he would accept of a conveyance of an house he had at Newcastle for satisfaction of his debt. Sir Thomas was unwilling to accept of it, but I did prevail with him to accept of it, not in satisfaction, but as an additional security; and the deeds I have here that I drew for that end.

Just. Pemberton. What time was this?

Babbington. This was a little before last Trinity-Term begun. I have taken a memorandum within a day or two, if your Lordship will give me leave to look upon it.

Just. Dolben. Have you not had all this time to get your papers ready?

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Babbington. My memory is very short indeed. But now I see about the third or fourth of June, Sir Thomas gave me orders to deliver declarations in ejectment.

Just. Dolben. When did he first bid you question him for monies upon the bonds?

Babbington. It was some time in May.

L. C. J. Did he tell you, you must sue him?

Babbington. Yes.

L. C. J. What then did Bolron say?

Babbington. Bolron did then desire that Sir Thomas would accept of security out of his house at Newcastle. Sir Thomas was very hard to be persuaded, but at length I did prevail with him, and I used this argument, That it was not to lend so much money upon that security, but his money was already out of his hands, and else desperate, and this was a further security, and that it would not lessen his other security, and upon these persuasions he did let me draw a deed to that purpose.

L. C. J. Was this some time in May?

Babbington. This discourse was in May.

L. C. J. Are you sure of it?

Babbington. The directions that I had for drawing the deed was in June, but the discourse with Sir Thomas was in May, and I do perfectly remember it by a circumstance which I shall tell your Lordship. After the deeds were drawn, (for drawing of which I had a letter under Bolron's own hand, and if occasion be, I have the letter here to produce) I came from York, having been there, and appointed a day for the sealing of them. I came to the house where Bolron lived, and Sir Thomas met me, and there I produced the deeds, and he of himself was very ready and willing to the sealing of them, but his wife, who was joined in the deeds with him, would not by any means seal, unless Sir Thomas would deliver up the bonds he had taken for the money, but Sir Thomas did utterly refuse to deliver up the bonds.

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L. C. J. What

L. C. J. What time in June was this?

Babington. A little before Whitfuntide.

L. C. J. What time was that?

Babington. That was the 14th of June, as I remember, that I delivered the declaration, and that day before, which was the 13th, to the best of my remembrance, I had this communication and discourse about sealing the writings, which the wife refused to join in; but Sir Thomas would only take it as an additional security, refusing to deliver up the bonds, but he would suspend further prosecution, and Bolron did then desire no longer time than a month for payment of the money. But his wife, though she were urged to seal the writings, would not be persuaded, but utterly denied it. After we had spent a great deal of time there, Bolron comes to me, and desires me to come another time, and he would persuade his wife to seal the deed; nay, said I, 'tis not fit for me to come up and down unless it be to some purpose, and your wife will seal; Will! nay, says he, I will force her to it. My answer was this, if you take these courses, Mr. Bolron, I must by no means be concerned in the matter; for your wife must pass a fine, and we must examine her secretly, and if she tells me she does it by your force, I will not pass it if you would give me a 1000l. After this about a fortnight he sent for me to come and his wife would seal.

L. C. J. By the way, are you a Protestant?

Babington. Yes, I am, Sir.

L. C. J. And always was?

Babington. Yes.

Att. Gen. Yes, he is an Attorney at large, I know him very well.

Babington. This was a fortnight or three weeks after that, the latter end of June, he sent for me to his house, and that his wife would be contented to seal. And this he desired might be done on the Tuesday, which was Leeds Market-day, and I could

not go. The next day I called upon him at Shippon-Hall; he was then within, and desired me to go up to Barnbow to Sir Thomas Gascoigne's with him: He said he should go within two or three days to Newcastle, for he had a chapman that would lay down the money, and take the security of the house, and he desired he might have the liberty to go thither to treat about it. I told him I did believe it would be no hard matter to persuade Sir Thomas to that, for he would be very glad of it. I went up with him to Barnbow, and as we went along, he asked me if, Sir Thomas did intend to sue him upon his bond? I told him I had directions so to do. He asked me likewise if he would turn him out of his farm? I told him, yes, if he would not pay his rent; and the truth of it is, he did then deny he had received the declaration in ejectment: But my man afterwards made his affidavit of delivery, and had judgment upon it. Afterwards I went up to Sir Thomas, and told him what Bolron desired, and he consented to it as readily as it could be asked; and in coming away he told Bolron, that in the management of his coal-pits he did neglect very much, and did go abroad, staying away two or three days together. To this Bolron made some excuse, and said it was for collecting his debts. Said Sir Thomas, I know not what you are about, but if you do well for yourself, I am satisfied.

L. C. J. How long had he been from him, and left his service then?

Babington. I know not when he went, but this was in June last. After this we went back again, and in coming back he was very inquisitive to the same purpose; he was asking me——

L. C. J. You say he chid him, and told him he was not a good husband in his colliery.

Babington. Yes; and as we came back he was inquisitive whether Sir Thomas Gascoigne

coigne would sue him, and turn him out of his farm. I did then enter into the same expressions, and told him, if he did not pay, he must be sued.

L. C. J. You told me, Sir Thomas had agreed to stay so long, when was this?

Babbington. My Lord, this was after we had parted with Sir Thomas.

L. C. J. After Sir Thomas had promised him to stay so long time, then said he, as you were coming home, Do you think he will sue me, and turn me out of my farm?

Babbington. Yes said I: "Well, (said he) then by God I will do that which I did not intend to do." What he meant by it, I cannot tell, but this was a little before he came to London, which I judge to be the latter end of June; and this is all I have to say.

Then Obadiah Moor was called.

Just. Jones. Did you tell Sir Tho. Gascoigne what he said, then I will do what I never did intend to do?

Babbington. I did never tell him, my Lord, for I looked upon it as an idle expression. And I will tell your Lordship why; because this man that is now to be examined did tell me, how that he was bound for him, and that Bolron to encourage him to be bound, said, You need not fear, for if Sir Thomas sues me, I will inform against him for keeping Priests in his house; and I did look upon it as an idle expression.

Moor. My Lord, in September last, was twelve-month, Mr. Bolron did desire me to be bound with him to Sir Thomas Gascoigne. Said I, I told him, Mr. Bolron, I have some small acquaintance with you, but I have no reason to be bound with you. Said he, Do not fear; there is my brother Baker, and Stephen Thompson are to be bound as well as you. Said he, I will give you my counter security. That signifies nothing, said I. You need not fear any

suits, said he; for if Sir Thomas sues me, I will inform against him for keeping Priests. Said I, When must this money be paid? Said he, at Candlemas next. So we went and were bound; the one bond was to be paid at Candlemas last, and the other in August. And after Candlemas he did not pay the money, and said I, Mr. Bolron, I don't like these Bonds, you must make new bonds for my security. I was afraid of being sued, and I desired Mr. Babbington to bring a writ against him, which he did; and upon Holy Thursday I had two Bailiffs ready to arrest him, but he could not be found; and I had two likewise the Saturday before at his pits. Presently after he came up to London, and made an information, and on the 8th of August last I met him in Ferry-bridge, and he came along with me; said he, Mr. Moor, you and I have often discoursed of Sir Tho. Gascoigne, you may do me good, if you do not, pray do me no harm. You have been often at his house. With that, I asked him if he was concerned in the plot? For, said I, you have been often telling me, and sworn it, and denied it utterly, that he was no more concerned than any body else: But I did but equivocate then, for I was a Papist, and if I had told a thousand lies, or killed twenty Protestants, our Priest would have forgiven me for it. And so coming to Farnborn, two miles from Ferry-bridge, he plucked out 10s. and said, I have no more money in my pocket but this, but pray be kind, and do me no harm, for you know I have denied it all along.

Just. Jones. Hath he done so?

Moor. Yes, several times.

L. C. J. How came you to discourse with him, and question him about it?

Moor. Because there was a general discourse in the country, that there were few Papists but what were concerned, and guilty of the plot.

L. C. J.

L. C. J. When was that discourse?

Moor. The latter end of September was twelve-month, when the plot was first discovered. And he said, Sir Thomas was no more concerned than the child that was to be born.

L. C. J. Had you any discourse with him about May last?

Moor. No, my Lord, in August, as I told you, I had.

L. C. J. When was the last time that he told you, Sir Thomas had not an hand in the plot?

Moor. I can't certainly remember, but I think it was in February, when I told him I would sue the bond, or have better security. It was a small time after Candlemas.

Just. Jones. What are you, a Protestant or a Papist?

Moor. A Protestant, bred and born so.

Just. Pemberton. He would have sworn it no doubt at that time, for he was under an oath of secrecy.

L. C. J. But you say August was the first time that he discoursed to you that Sir Thomas was in the plot?

Moor. Yes.

Then Stephen Thompson was called.

Just. Dolben. Well, what do you know of this business?

Thompson. My Lord, if you will give me leave to speak, I know a great deal of the unkindness betwixt Sir Thomas and Mr. Bolron. He came down to me, he was Sir Tho. Gascoigne's Steward of his colliery, and Sir Thomas liked not of his accounts, and turned him forth. There was a great deal of money owing to Sir Thomas, and he came to Sir Thomas to agree about it, and he desired me to be bound with him to Sir Thomas: Said I, Mr. Bolron, how shall I be secured? Said he, there is a great deal of money of which I never gave Sir Thomas any account, I will gather it in

and secure all; and so Sir Thomas Gascoigne knew nothing of it. So bonds for 60*l.* were entered into to pay 28*l.* at Candlemas. So Sir, when Candlemas came, and he did not pay the money, I went up to him, and asked him what he would do about this money, what course he would take to satisfy? Oh! never fear, said he; why said I, hath he any hand in the plot? If he hath, let us know it; for he had made a great deal of his goods away, and then I thought I should not be secured; Oh, said he, he is a sin less of it.

L. C. J. Who did make away his goods?

Thompson. Bolron did.

L. C. J. When was this?

Thompson. Candlemas last. For then I thought Sir Thomas might sue me for the money, and I would fain have known if Sir Thomas had any hand in the plot, and I pressed him much to tell me. Then it passed on, and having a writ out against me, I durst not stir out myself, but I did send my man to him to know what he did intend to do about it: He told my man, brother, tell thy master he need not to fear at all; Why, said my man, do you know he hath any hand in the plot?—

Just. Dolben. That is but what your man said.

Just. Pemberton. Is your man here?

Thompson. No.

Just. Dolben. Therefore you must not urge that he said to you, 'tis no evidence.

Thompson. On Thursday after I went up to him myself, and got him to go up to Sir Thomas, and so when he came to Sir Thomas, he would give him no time but a fortnight to pay the money; Bolron desired but three weeks time and he would procure him his money; so away we came down. Said I, what do you intend to do in this case? Said he, "If he do sue me, I will do him an ill turn;" and soon after he went to

to London, and said, he would go to sell his land at Newcastle; and a while after I went out to see if he were come again; and meeting him, it was when he was going to London again to carry on his design: Said I, Robert Bolron, what do you say in this case; you are going now to leave the country, and how shall I be secured against Sir Thomas? Do not question it, said he, for I am to receive on the King's account, 30l.

L. C. J. Upon whose account?

Thompson. Upon the King's, concerning the taking Sir T. Gascoigne.

Bolron. But I never had a farthing of it.

Thompson. But said he, I will not take it, for another bids me 60l. and I know what Otes and Bedloe had, and I won't abate a farthing of that.

L. C. J. When was this?

Thompson. It was after he had taken him; and on Holy Thursday he did say, "If he did sue him, he would do him an ill turn."

Then the Lord Chief Justice being to sit at Nisi prius at Guildhall, went off

William Backhouse was next called.

Just Jones. Let him ask Backhouse what he will.

Sir T. Gascoigne. I would ask him what threats he gave to his wife to swear against her conscience, and promise of 500l. he should gain by it.

Backhouse. I served the warrant to carry the witnesses before Esq; Lowther and Esq; Tindal: I was charged the 7th of July last to help to fetch the witnesses before the justices, and to take Sir T. Gascoigne, I and two of my sons, and he opened the door his own self. When we had taken him, Esq; Lowther directed us to bring the witnesses before him, and we did so. When we came to Bolron's house, his wife was sick on bed, and I said that she must go before the Justice of Peace to swear against

Sir T. Gascoigne for high treason: She said she knew nothing against Sir Thomas, but Bolron said she must go, or he would have her drawn at the cart's arse.

Then Hamsworth was called.

Just Jones. What will he ask him?

Sir T. Gascoigne. I ask him about the threatening of his wife.

Hamsworth. May it please you, my Lord, the same day that Sir T. Gascoigne was taken, Robert Bolron came to his wife, and told her, she must go to Esq; Lowther, to swear against Sir T. Gascoigne; she fell a weeping, and would not go by no means; he threatened if she would not go, he would tie her to the horse's tail.

Just Dolben. Did he tell her what she should swear?

Hamsworth. I did not hear him, only to swear against Sir Thomas.

Just Dolben. What she knew, was it?

Hamsworth. Yes; and she said she did not know any thing of misdemeanor of Sir Thomas Gascoigne touching his sacred Majesty, or the church government.

Just Jones. Art thou sure she said those words?

Mowbray. My Lord, he is a Papist.

Hamsworth. I am a Protestant.

Just Pemberton. How long have you been a Protestant?

Hamsworth. I was born so.

Just Jones. Well, thou hast added a few fine words that I dare say she never said.

Just Pemberton. Were you never a Papist?

Hamsworth. Yes, I was.

Nicholas Shippon was called.

Mowbray. This man is a Papist too.

Just Dolben. Do you think he is not a witness for all that?

Sir T. Gascoigne. What discourse he had May 30. the day after the race.

Just Pemberton. Well, ask him what you will: What do you say?

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Shippon.

Shippon. Mr. Bolron was with me the 30th day of May.

Just. Dolben. What, May last?

Shippon. Yes, the day after Ascension-day: He came to my house about two o'clock in the afternoon, and staid at my house all that afternoon while an hour after sun-set before he went away; he came and brought a letter with him to carry to Newcastle, and it was sent away thither.

Just. Dolben. Are you sure it was the day after Ascension-day? How if it should fall out to be another day?

Shippon. Yes, Ascension-day was the 29th of May: He came to me about two o'clock.

Serj. Maynard. Pray what reason had you to take notice of this?

Shippon. He came and brought a letter to me that was to go to Newcastle, and desired me, that my little boy might carry it to a kinsman's house of mine; for he said, he was afraid of the bailiff, and did not care for stirring out; my wife brought him some meat and drink, and he said it was better than he had at home; and she said she was the more sorry things were no better with him.

Just. Dolben. But how came you to take notice that this fell out the 30th of May?

Shippon. The night before I met him coming from the race, which was the 29th of May, and he asked me if I saw any bailiffs waiting for him? and I said, yes; and he said, it was well if he miss'd them; and he asked me if I saw Bennet Johnson.

Just. Jones. How long was it you say he staid?

Shippon. He came about two o'clock, and staid till an hour and half after sun-set.

Serj. Maynard. What religion are you of? friend, let us know?

Just. Dolben. What say you to the truth of this, Bolron?

Bolron. My Lord, there is not a word of it true; for I was about two o'clock at Sir T. Gascoigne's, they were marking some sheep, and I was there most of the afternoon.

Just. Jones. Were you ever at his house at any other time to send any such letter?

Bolron. I never sent any such letter: Indeed that day I was a little of the afternoon at his house; but I staid there but half an hour; but I was most part of the afternoon at Sir T. Gascoigne's, seeing them mark sheep.

Then Roger Gregson was called.

Just. Jones. What do you say to him?

Sir T. Gasf. Let him speak his knowledge.

Serj. Maynard. I desire he may ask the question, for he only generally refers to them what they know.

Sir T. Gasf. What did he say to you about August last?

Gregson. My Lord, I will tell you: We met about August last, Robert Bolron and I, about a week before Bartholomew day: We had some discourse, he came from London a little before that, and I asked him how Sir T. Gascoigne did.

Just. Dolben. Was he apprehended in August last?

Gregson. Yes, he was in the tower. He said, Well. I asked him how he would come off about the plot (as they call it)? Said he, he may come off well enough, but it will cost him a great deal of money. I then did ask, how they came to fall out? And he said it was long of that rogue Addison, brother to the Priest, who had called him to account, or else he had never done Sir Thomas that injury; and I suppose that was the cause of it. And then we had some more discourse, and that discourse was this, He rides a little from me (he was on horseback) and came back again; said he, I can tell you, the King was at Windsor, and one of the Privy-council made an attempt

tempt to stab the King, and the King made his escape, and now they will believe my information the better.

Just. *Pemberton*. Go on.

Gregson. That is all I have to say.

Just. *Jones*. What are you, a Papist?

Gregson. No, I am no Papist, I deny it.

Serj. *Maynard*. Nor never was?

Gregson. Nor never was.

Then James Barlowe was called.

Serj. *Maynard*. My Lord, I conceive this man ought not to be heard, for he is under an accusation of the same crime; and we have had two orders of council to apprehend him.

Att. Gen. There was an order of council within this fortnight to send for him up in custody.

Just. *Dolben*. There is nothing in record against him, and you may discredit his testimony, but you cannot refuse him; he is not to come upon his oath.

Sol. Gen. [*Sir Francis Winnington*.] Bolron swears too that he was at the consultation.

Just. *Dolben*. Let us hear him what he says; we must leave it to the jury what to believe.

Serj. *Maynard*. They would question him about Mr. Bolron's cozening, which ought not to be.

Sol. Gen. This man hath sworn it against him.

Hobart. Why did you not indict him, Sir?

Serj. *Maynard*. Sir, you ought not to prate here.

Just. *Dolben*. Come, I doubt you are a little too pragmatical.

Just. *Jones*. If you had any record of the indictment to shew against him, we would not examine him.

Hobart. Will you ask him any questions, Sir?

Sir T. *Gasc*. You know, Sir—

Serj. *Maynard*. That is not proper, he tells him what he knows.

Just. *Pemberton*. Look you, Sir, we did not intend that you should come here to manage all as a counsel; it was said, he could not hear well, and so you were only to tell him what was said.

Sir T. *Gasc*. I would ask him what he does know concerning taking of money, and stealing from me?

Just. *Dolben*. But that must not be asked

[Which *Hobart* told him.]

Sir T. *Gasc*. Then you must tell me what I must ask.

Just. *Pemberton*. Come, you have been pragmatical, Sir, and made him a brief, and he cannot manage it without you.

Serj. *Maynard*. Did you write this brief?

[meaning a brief in Sir Tho. Gascoigne's hand.]

Hobart. No, an't please you, Sir.

Then Mr. Ravenscroft offered to speak what this witness had told him,

Just. *Dolben*. Look you, Mr. Ravenscroft, if what he says tend any thing to this business, that Sir Tho. Gascoigne comes to know of his stealing, and then turned him out of his service, it is material; but if you come to tell a story here of another's man's knowledge, we can't spend our time so.

Ravenscroft. It was not known but last night to me, and if you will not let me tell you what it is, how should you know it?

Mrs. *Ravenscroft*. He is a chief witness for my grandfather, and I desire he may be heard, for he discovered it but last night to my husband.

Just. *Dolben*. If it tend any thing to this business, that Sir Thomas turned him out of doors, and therefore this man bears him an ill will.

Just. *Pemberton*. We had as good hear Mr. Ravenscroft however; but pray, Sir, make your story short.

Ravenscroft

Ravencroft. He came to me and said these words, "I have kept a secret a long while, in which I have done very ill"—

Just. Pemberton. Then it does not tend at all to this affair; for you must not come to tell a story out of another man's mouth.

Just. Dolben. Pray sit still, Sir, and be quiet.

Just. Jones. Indeed you must be satisfied.

Just. Pemberton. If you have any other witnesses, call them, and do not spend our time.

Just. Jones. For the jury must be told, that it is no evidence coming out of another man's mouth.

Just. Dolben. It is as if a man should come and say, I can say something for Sir T. Gascoigne, when I know nothing but what another man told me.

Just. Jones. Ask Sir Thomas, if he would have this Barlowe examined?

Sir T. Gasc. Yes.

Just. Pemberton. Then what questions will you ask him?

Sir T. Gasc. What conspiracy was had to take away a great deal of money from me; and how he concealed it because he would not do him a mischief?

Just. Dolben. What is that to Sir Thomas's life?

Mr. Ravencroft. I cannot tell you by bare assertion, but if you will hear what I have to say, do. Last night, late at night, about nine o'clock, Barlowe came to me, says he, Mr. Ravencroft—

Just. Dolben. Come, don't tell us the preamble, but the story.

Ravencroft. Said he, I have a thing that ticks upon my thoughts, which I doubt may endanger Sir Thomas's life.

Just. Dolben. Well, was it about taking money?

Ravencroft. Said he, if I am silent, I doubt it will cost Sir Thomas his life. Then I asked him what it was? Says he, Mr.

Mowbray, who is a witness in this court, and I, did just a little before his going away, combine, or rather he did seduce me—

Just. Pemberton. Was it about money?

Ravencroft. Money is in the case.

Just. Dolben. He did conspire what to do?

Ravencroft. If you will hear me, I will tell you.

Just. Jones. Pray do it quickly then.

Ravencroft. Did combine to rob Sir Sir Thomas of a great sum of money; and whereas I held my tongue, thinking not to spill his blood, I see now if I do not tell the truth, I shall make good his credit, and so endanger Sir Thomas's life.

Just. Dolben. Well, I'll ask you, or any man alive now; two men combine to rob Sir Thomas, whether one man be a competent witness against the credit of the other witness? he makes himself a rogue by combining, and you have made him a knave by his own confession.

Ravencroft. I may perhaps err in that word; he did not say, combine, but the other seduced him.

Just. Dolben. You have told a story to no purpose.

Just. Pemberton. You think it a fine thing to be a Catholic, and to appear brisk for them.

Ravencroft. Who says I am a Catholic?

Then George Dixon appeared.

Sir T. Gasc. What do you know of any conspiracy of these people against me?

Dixon. My Lord, I was at William Batley's in August last in the morning at ten o'clock, and Mr. Bolron and Mr. Mowbray came in, and called for a flaggon of drink, and when it was brought, they fell into a discourse together concerning Sir Thomas Gascoigne and my Lady Tempest. Says Mr. Mowbray, I know nothing of Sir Thomas but that he is a very honest man. Serj.

Serj. *Maynard*. He was not bound to tell you what he knew.

Just. *Jones*. When was this, in August last?

Dixon. Yes; but said he, if I knew any thing against my Lady Tempest, I would discover it, for I would hang her if I could. And they sat down at Mr. Batley's house to consult what they should do.

Just. *Pemberton*. Before you?

Dixon. Yes. I heard every word.

Just. *Jones*. And what did they say?

Dixon. They said that they would meet at Mr. Bolron's house, and if they would compleat their business they should be very well gratified.

Just. *Dolben*. Against whom?

Dixon. Against my Lady, and Sir Thomas.

Just. *Dolben*. But you say, Mowbray said he knew nothing against Sir Thomas Gascoigne?

Dixon. No; and he said he knew no hurt by them.

Just. *Dolben*. How come they to say they would contrive their business?

Mowbray. What man is that, Mr. Bolron?

Bolron. I know him not, nor ever held any such discourse.

Mowbray. Nor I.

Just. *Jones*. How far do you live off one from another?

Dixon. I live at Leeds, Mr. Mowbray knows me.

Mowbray. I do not know that ever I saw you.

Dixon. He hath drank with me.

Mowbray. I know him not, nor where he dwells.

Just. *Dolben*. What trade are you of?

Dixon. A cloth-dresser by trade, but I keep a public-house.

Just. *Dolben*. This discourse was at Leeds, was it not?

Dixon. Yes.

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Just. *Dolben*. They say both they do not know you, nay they swear it. And it is very like you were but very little acquainted, would they let you hear them talk thus?

Dixon. We were as well acquainted as can be, but that he will deny it.

Att. Gen. Pray what religion are you of?

Dixon. A Protestant.

At. Gen. How long have you been so?

Dixon. All the days of my life.

At. Gen. I can't but wonder at the strangeness of your acquaintance.

Mowbray. My Lord, I have not drank at that place which is near the old church at Leeds, not this two years.

Then William Batley was called.

Batley. And if it like your honour, these two gentlemen Mr. Bolron and Mr. Mowbray, came to my house, and called for a pot of drink.

At. Gen. Do you not know this man neither?

Mowbray. Yes, I do, but I was never three times in his company in my life.

Batley. I filled them a flaggon of ale, and when I had done I left them. They began to discourse of the plot, and Sir Tho. Gascoigne; and Mr. Bolron.—

Just. *Dolben*. At your house, where is your house?

Batley. My house is near the old church at Leeds.

Just. *Dolben*. Is that the same place the other man speaks of?

Batley. Yes. Says Mr. Bolron to him, Thou knowest that Sir Thomas Gascoigne hath been very severe against thee and me, and now here is an opportunity offered us to take a revenge on Sir Thomas Gascoigne, *Mowbray* replied again, As for Sir Thomas he is a very honest man, and I know no hurt by him; but as to my Lady Tempest, if I knew any thing against her I would hang her, for I would discover it. But

thou knowest, says Bolron, that Sir Thomas sues and troubles me, and if I do not make somewhat out against him, he will ruin me, and it must be done by two witnesses. To which Mr. Mowbray answered again, How shall we bring this business about? If thou wilt but come to my house, said he, I will put thee in a way to contrive it, and we shall have a considerable reward. And Mowbray told him he would come to him such a day.

Just. *Dolben*. Was that man that went out last, with you all the time they spake?

Dixon. Yes.

Just. *Dolben*. He does not say half so much as you do.

Just. *Pemberton*. Were you in the room?

Batley. No, I was at the stairs head.

Just. *Pemberton*. What did you stand there for?

Batley. I hearing them discourse of Sir Tho. Gascoigne, hearkened what they did say.

Just. *Dolben*. The other man said he was in the room with them; Were you in the room?

Batley. I stood upon the stairs.

Just. *Jones*. Were you in their company at all that day?

Batley. Yes, my Lord, I carried up a flaggon of ale.

Just. *Jones*. Was the door left open.

Batley. Yes.

Just. *Dolben*. Would any men talk in such a place as this, that all the world may hear them, when they are contriving to take away a man's life?

Just. *Pemberton*. You were in the same room, *Dixon*, were you not?

Dixon. They were at the Grice head, and we at the foot.

Just. *Jones*. But the other says, he was at the top of the stairs, the head of the stairs.

Dixon. We were at the stairs foot, and they were in the room.

Batley. The table they sate at, joined just upon the head of the stairs.

Just. *Jones*. Did you hear them down to the stairs foot?

Dixon. We did stand there to hear them discourse.

Just. *Dolben*. Could you see them where you were?

Dixon. Yes, as fair as I see you.

Just. *Dolben*. Could they see you?

Batley. No, they could not.

Dixon. Yes, if they had looked down.

Just. *Dolben*. Why then I ask you, Do you think, if you stood in so open a place to be seen, and they had seen you, can you imagine that they would talk so about taking away Sir Thomas Gascoigne's life?

Batley. I do imagine they did not know I was there, not believe any one heard or saw.

Just. *Pemberton*. Do you know how they came there?

Batley. They said they came out of Leeds, and said, one Mr. Legat was to come that way, who they were to speak with.

Just. *Jones*. I ask you, if you were in the room under them?

Batley. And if it like your Lordship, I stood at the stair's-foot.

Just. *Jones*. Just now you said it was at the stair's-head.

Just. *Pemberton*. Did you say any thing to them about this?

Batley. No, I did not open my lips to them about it, but I told it to a friend about three or four weeks after.

Just. *Jones*. To whom?

Batley. To a neighbour of mine: I suppose it was told Mr. Babbington.

Just. *Dolben*. What say you, Mr. Babbington? How came you to know of this?

Babbington. When the Commissioners of Oyer and Terminer were sitting at Leeds, there was one came and told me, George Dixon could afford me something that would

would be very advantageous for the benefit of Sir Thomas Gascoigne.

Just. *Dolben*. Who was that man?

Babbington. Bennet Johnson, or Francis Johnson.

Just. *Dolben*. Was that the man you spoke to?

Batley. No, I spoke it to a Smith, one Richard Lofrus.

Babbington. I'll tell you another person I heard it from, that was Mr. Bailiff, of Leeds?

Just. *Pemberton*. Well, was this the common discourse at Leeds?

Just. *Dolben*. He says so. Was it then presently?

Babbington. The bailiff did not tell me so suddenly.

Just. *Dolben*. Would it not have been to your purpose to have brought the bailiff here?

Babbington. It was after the commission of Oyer and Terminer that I had it from him, which was in October.

Bolron. In the time of August I was not at Leeds, I was in Northumberland searching for Priests, and in the Bishoprick of Durham, all but a little of the first of it.

Then Mrs. Jefferson was called.

Just. *Pemberton*. What do you ask her?

Sir T. *Gasc*. Pray be pleased to speak to the conspiracy and combination against me.

Just. *Jones*. Whose combination? Come, Mistress, what do you know?

Jefferson. I asked Mr. Mowbray one time, what he knew concerning Sir Thomas Gascoigne? And he said, he knew nothing, but Sir Thomas was a very honest gentleman for what he knew, and the best friend he had.

Just. *Jones*. Is that all you know?

Jefferson. He thought he was wrongfully accused.

Just. *Pemberton*. When was this? Was this after the time he was accused by Bolron?

Jefferson. It may be it might be, I think it was in August.

Just. *Jones*. In August last?

Jefferson. Yes.

Just. *Dolben*. But you must needs know (it was the talk of the country) when Sir Thomas Gascoigne was sent for up to town; was it after that time?

Jefferson. Yes, I think it was.

Just. *Jones*. Then you say, you heard Mowbray say that Sir Tho. Gascoigne was an honest gentleman, and he could say nothing against him?

Jefferson. Yes, ask him else.

Then Matthias Higgringil was called.

Just. *Dolben*. Was he one at the meeting?

Bolron. He was at the sealing the conclusive conveyance.

Just. *Jones*. This Higgringill is a Protestant, is he not?

Bolron. I know not, I think so.

Just. *Dolben*. Come Sir, what say you in this matter?

Higgringil. To whom?

Just. *Dolben*. What can you say to the business about Sir T. Gascoigne?

Sir T. *Gasc*. Speak to the threatnings to take away my life.

Higgringil. I have nothing to say to Bolron; but Mowbray on the 25th of September last, being at an alehouse, Mr. Legat and he were together, consulting how to disgrace Sir Thomas, and take away his life; and he calls me out to speak with me: Now, said he, I shall match them, for they have done what they could to disgrace me.

Just. *Jones*. How did he mean that?

Higgringil. I suppose he had taken away some money and gold, and they spoke of it, and that was to disgrace him.

Just. *Dolben*. Was it charged upon him?

Higgringil. It was suspected always he had taken it away.

Just.

Just. *Dolben*. But was there any such thing talked of in the country?

Just. *Jones*. What did he say to you?

Higgringil. He said, they did what they could to disgrace him, and take away his life, and he would requite them.

Just. *Pemberton*. Who they?

Higgringil. Sir Thomas Gascoigne and my Lady Tempest.

Just. *Pemberton*. Why? Did Sir Thomas indict him?

Higgringil. No; but the noise was about the country.

Just. *Dolben*. When was this? In September last?

Higgringil. Yes.

Just. *Dolben*. What profession are you of, *Higgringil*?

Higgringil. An husbandman: I graze, and I farm a farm.

Just. *Dolben*. You know this man, do you not, Mr. Mowbray?

Mowbray. Yes, Sir Thomas employs him, he is a kind of collector to him.

Ravenscroft. He is no Papist.

Then Francis Johnson appeared.

Just. *Dolben*. Well, come, what do you know?

Johnson. He hath sustained great losses by him.

Just. *Dolben*. He! Who?

Johnson. Sir Thomas Gascoigne.

Just. *Dolben*. By whom?

Johnson. By Mr. Bolron.

Just. *Dolben*. What loss hath he received?

Johnson. The very first month he entered, he wronged him of 3l.

Just. *Jones*. How do you know that?

Johnson. I cast up the acco'mpt myself.

Just. *Jones*. But he kept him two years after that?

Johnson. Yes, he did.

Bolron. My Lord, I lost 3l. the first three weeks, and Sir Thomas forgave me it, I don't deny it.

Just. *Dolben*. Do you know of any malice between them, and that he said he would do him any mischief?

Johnson. No.

Then Mr. Peblès, Clerk of the Peace in the county of York, was called.

Sir *T. Gasc*. I would desire you to speak of the carriage of Mr. Bolron to you, Sir, what you know.

Peblès. My Lord, I was in York last Assizes, and Mr. Bolron came to me into a room, where I was with some gentlemen, and asked me how I did? And asked me if I did not know him? I told him I did not remember him; said he, I am the prosecutor against Sir Tho. Gascoigne. So when he was sat down, after a little while, he desired to discourse with me; and asked me, If a man was indicted as a traitor, whether it were fit to pay him money? I owe, said he, Sir Tho. Gascoigne money, and I would know whether it be fit to pay it to him? Said I, I think you may safely pay him his money before he be convicted, but then 'tis the King's, in my opinion. Nay, said Bolron, he is sure to be convicted: Then said I, I think it not safe to pay it, therefore I leave that to your own discretion, whether you will or no. A little after he desired to have my opinion concerning the two Judges that came our circuit, for I am mightily abused by them, said he, they will not at all give me audience; I came from the King and council, and they slight me, and will not hear me speak: Said I, I believe if you will go to them, they will hear you. I went to speak with them, and they sent some of their servants out to know what I would say to them; but I have writ a letter to them to tell them my mind; but said I, I can't believe that any one will presume to carry such a letter; but for that I will leave it to you. So I came away from him; and after he follows me out, and desires to speak with me again: Said he, I have something

something against you concerning this business in hand, I can do you a prejudice if I will: Said I, God bless me, I know nothing of it, I do not at all intend to court your favour, I have no mind at all to that: Said he, I will not do it; and he spoke as if he had no desire to do it: I would not court him, but came away and left him: He followed me to the street again, and said, will you help me to apprehend a traitor? Who is it, said I? It is a gentlewoman, said he; a woman greatly concerned in the plot; you may apprehend her in the street, and 'tis the best time. Now the street was full, and I thought it a little unseasonable; so he looked after me, but I never offered to go from him: But, said I, was she in the plot? Yes, said he, she was to be the first Lady Mayores of York after the plot took effect, and the King was killed; but he did not lay hold upon her; so I parted with her; then, said he, I can have no respect; said I, I have nothing to do with you; I am Clerk of the Peace of the West Riding in this county, and am always ready to do my duty there; so away I went and left him. The next news I heard was, he had procured a warrant of the Council against me; and he brings the warrant to a Justice of Peace, and that Justice of Peace told him, there would be several Justices of Peace at Leeds within two or three days after, and then they would examine the business. I chanced to be in a room with some gentlemen, not knowing of the warrant that was out against me, and this gentleman that was the Justice of Peace called me into another room, and told me of this business: I admired at it, and told him I did know nothing of it, nor that I had disobliged him, unless it was because I did not give him the compliment and ceremony of my hat, nor give him money, neither did I know what information he had procured that warrant upon. He told me Mr. Mowbray and Mr.

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Bolron were in town: So I desired him to send for the other Justices into the room, where he acquainted them with the matter, and said he, if you will, we will examine it to night; so they sent notice to Mr. Mowbray and Mr. Bolron, that they would examine the business that night at six o'clock; and they came; and he was asked what he had to say against me? He said I had taken money for keeping a man from taking the Oath of Allegiance, and they had witnesses to prove it—

Serj. *Moynard*. Must he be here admitted to make his own defence?

Just. *Dalben*. Brother, let him go on.

Pebbles. The witness was called upon, and they asked him to that point, and he denied absolutely upon his oath that he gave me any money, and also swore, he had taken the oath when it was tendered to him. Then, my Lord, there was one Mr. Dunford, an Attorney, was spoken of, as if he could prove something, but he was fourteen miles off, and they could not send for him, and so I begged they would appoint another time for hearing when he could be there; they appointed Monday following, and ordered me to attend, and one of the Justices of the Peace undertook to give Dunford notice. Accordingly I came there, but there was no Mr. Bolron nor Mr. Mowbray; but I desired that Mr. Dunford might be examined upon his oath, and they did take his information in writing, and he swore he knew nothing of it, neither did he ever give me money upon any such account.

Just. *Dalben*. You were not by when it was sworn?

Pebbles. I saw the examination taken in writing.

Just. *Pemberton*. And you were discharged?

Pebbles. Yes, for he could not make out any thing at all.

Just. *Pem-*

Just. *Pemberton*. It was well for you, he could not make it out.

Pebles. They said they could prove it, and vouched these two persons, but both denied it upon their oaths.

Just. *Dolben*. Is that all you know?

Pebles. That is all I can say in particular; I have not a mind to speak against him in general, because he is the King's evidence.

Just. *Dolben*. You can say nothing of his repute?

Just. *Pemberton*. You were a stranger to him, you did not know him.

Sir *T. Gasc*, I desire he may speak what reputation he hath among the Justices.

Pebles. I have no mind to reflect on the King's evidence, and if I did, it would seem as if I should speak in malice; he hath done me wrong, but I never did him any.

Just. *Jones*. But what is his reputation generally?

Pebles. Truly, 'tis not very good in the country?

Just. *Jones*. Among whom?

Pebles. The grand jury, and the gentlemen of the country?

Just. *Jones*. Is it a common fame in the country?

Pebles. Most people discourse ill of him.

Just. *Dolben*. Did he say he did not speak with the Judges?

Bolron. No, my Lord, I did not.

Just. *Dolben*. You did speak with us; indeed you would have had us allowed you a guard for your safety, which we could not do.

Bolron. Whereas he says I gave in a wrong information; this same Hunt when he came before them confessed he gave him 40s. but he would not swear for what it was.

Serj. *Maynard*. 'Tis nothing to the purpose one thing or other that he hath said.

Just. *Dolben*. 'Tis altogether uncertain; no body knows what to make of it.

Then Hardwicke was called.

Sir *T. Gasc*. Do you speak what threats Bolron hath used to his wife to swear against me.

Hardwicke. When the pursuivants came up to Barnbow, the chief Constable ordered me to assist Mr. Bolron in execution of the warrant, and to carry the witnesses before a Justice. We went to Robert Bolron's house to take the witnesses, and there was his wife, his brother, and his sister: We were to carry them before a Justice, and they refused to go; his wife pretended to be sick and could not go, and they begged of us to excuse them.

Dolben. Who do you call they?

Hardwicke. His wife, his brother and his sister: Bolron told them they must go, and William Backhouse and I ordered them by all means to go along with us, I suppose it was to testify what he had sworn.

Just. *Jones*. What were they to do, did he tell them?

Hardwicke. They were to go to tell what his testimony was above; as well as I understood the discourse.

Just. *Dolben*. We have had two persons to this purpose before. They say he would have his wife go, and she refused to go, and cried; but they do neither of them say he pressed her to speak any thing more than she knew, or against her knowledge.

Just. *Pemberton*. No, one of the witnesses said, he told her it was to speak her knowledge.

Then William Clow was examined.

Just. *Dolben*. Come, what say you?

Clow. The 22d of May last I had a writ against Bolron, and my man arrested him and brought him to my house.

Just. *Dolben*. At whose suit?

Clow. At the suit of one Higgringil that was seryant to Sir Thomas, and there I had him two days and would not carry him to the

gaol, for he begged of me I would not; but then I told him I would keep him no longer there, for he had no money for lodging and diet; but he begged so hard of me that I would but tarry till Higgringil came, and then he did not care what they did with him; for he would make Sir Thomas pay Higgringil his debt that he owed him, or he would play him such a trick as he little dreamt of.

Just. *Dolben*. When was this?

Clow. The 21st or 22d of May last, or thereabouts.

Just. *Dolben*. May last?

Clow. Yes. And so Higgringil came over, and they did agree, and he gave him a lease of an house he lived in, and Higgringil took the charge of both the debts upon him.

Then Hobart stood up.

Sir *T. Gasc*. Speak whether he pretended he writ a letter to the Duke of Monmouth from Leeds.

Mr. *Hobart*. My Lord, I have nothing to say to that.

Just. *Jones*. What can you say then?

Hobart. All I can say is to the sums of money returned to town.

Just. *Dolben*. He did not mention that.

Hobart. If you please to let me declare what I know about the returning of the money.

Just. *Pemberton*. Pray speak what you know of your own knowledge.

Hobart. For most part of it I know of the payment of it, and to whom; 1800l. there was paid to Mr. Trumbal about the purchase, it was paid at Mr. Mawson's, I was a witness to the deed, and to the receipt.

At. *Gen*. That is some, but what to the rest?

Hobart. 200l. was paid to a client of mine, 80l. was paid to one Widow Cawson that was upon bond.

Just. *Dolben*. How much was paid to

Mr. Corker?

Hobart. Several sums, above 300l. paid to Corker in Six years time.

Just. *Pemberton*. Nay in four years time:

Hobart. This 300l. and 300l. before I drew the receipt for, and commonly he ordered me when Mr Corker came for it, that I should have a receipt from Mrs. Mary Appleby, and it came back signed by her, to whom Sir Thomas was guardian.

Just. *Dolben*. And was all this money paid to Corker upon the account of this Appleby?

Hobart. It was mentioned in the receipt.

Just. *Dolben*. How much was she to have by the year?

Hobart. 100l. by the year, or two sometimes.

Just. *Dolben*. How came she to have 900l. in four years?

Hobart. My Lord, I will tell you; for that there was an arrear upon a suit between Sir Thomas and Mr. Appleby, this Mrs. Appleby's father, and upon the hearing of the cause, my Lord Keeper Bridgman was pleased to order, that this money should be paid to Sir Thomas for the use of the daughters; 200l. a-year, that is 100l. a-piece; and there was an arrear for three or four years during the suit, about 2 or 300l. it was; I drew a receipt for it, and Sir Thomas being pressed for the money by Mrs. Appleby, who went beyond sea, he sent to Corker to get the money returned to her.

Just. *Dolben*. Ay, but you dance about the bush: was there an arrear of 500l.?

Hobart. For three or four years, and Mrs. Ravenscroft was one of the sisters, her part was paid when she was married, but this gentlewoman's was paid beyond sea.

Just. *Dolben*. Were the arrears from Sir Thomas to the gentlewoman beyond sea?

Hobart. Yes.

Just. *Dolben*. Are you sure there was?

Hobart. Yes, Sir Thomas told me so.

Hobart.

Just. *Pemberton*. Who was to pay this money?

Hobart. Mr. Appleby, by order of my Lord Keeper.

Just. *Jones*. Sir Thomas was guardian, was the estate in Yorkshire.

Hobart. It did arise out of rents there.

Then one Culliford was called.

Just. *Dolben*. What say you, what do you know of this matter?

Culliford. This gentleman lodged at such a time at my house, the 4th of June 1677, he was at my house seven weeks, and he was gone three weeks, and returned again; he was three weeks away.

Just. *Jones*. What gentleman was this?

Culliford. Mr. Moubray.

Just. *Dolben*. What is that to the purpose?

Just. *Jones*. How do you apply that?

Hobart. Mr. Moubray hath said he sent a letter to the Duke of Monmouth.

Just. *Dolben*. There hath been no mention made of any such thing; have you any more witnesses?

Hobart. No.

Just. *Dolben*. Then ask Sir Thomas what he hath to say for himself.

Hobart. Have you any thing to say to the court for yourself?

Sir *T. Gasc*. No, I refer myself to the judgment of the court.

Then a woman witness appeared.

Sir *T. Gasc*. What do you know concerning Mowbray, whether he was suspected of stealing when he was at my house?

Witness. Yes, he was, my Lord, he would have given me 5l. to have gone away, and he did intend to have clapped me in prison, and laid it all upon me.

Just. *Dolben*. How do you know that?

Witness. He told me so.

Mowbray. This is a common woman and not to be believed.

Serj. *Maynard*. My Lord, we will reply but one short thing in matter of evidence.

Much of this that hath been given by the defendant hath been to take off the credit of the witnesses, and for Bolron they would suggest that he hath been dishonest to Sir Thomas, but when Sir Thomas himself was examined to that point before the council, he said he found him honest, but only accounted him a fool.

Just. *Dolben*. That is proper for you to do now brother.

Serj. *Maynard*. And Sir Thomas being examined about Rushton, he said he did not know such an one, and then afterwards he did say he knew one of that name. Here is Sir John Nicholas the Clerk of the Council. [Who was sworn.

At. Gen. Pray, Sir, do you know what Sir Thomas Gascoigne said at the council-table?

Sir *J. Nich*. He was asked whether he knew Bolron, he said he knew him very well, he had been his servant till within this twelvemonth or something more, but for his honesty he had nothing to say to it, till of late he had not behaved himself so well in giving informations against him. But he did find him now what he did always take him to be, a fool.

Just. *Dolben*. What did he say about Rushton?

Sir *J. Nich*. At first he did say, he did not know Rushton the Priest, but after it was brought to his memory, he said he knew one of that name.

At. Gen. It is taken down in the minutes, Sir John look upon them.

Sir *J. Nich*. He denied at first that he knew Rushton the Priest, and afterwards the next time he came to the council, he said he did deny it, because he was afraid of an old law against harbouring of Priests.

At. Gen. If your Lordship please we will now trouble you with a witness or two, in answer to what Backhouse and Hardwick have said as to Bolron's threatening of his

his wife. We will call the wife to give you an account of that.

Just. *Dolben*. They did not charge him that they pressed her to swear falsely.

Just. *Pemberton*. That does not at all touch upon the witness.

Att. *Gen*. If the court be satisfied we will trouble you with that no further.

Just. *Jones*. I believe Backhouse did say, That this Bolron would have his wife go before the Justice of Peace, she said she knew nothing at all, yet he would have her go and testify her knowledge, and if she would not, he would have her dragged at the horse's tail.

Att. *Gen*. I think it is necessary to call a witness or two to that. First to call her herself. [Then Mrs. Bolron was sworn,

Att. *Gen*. What did your husband threaten you to make you swear against Sir Thomas Gascoigne?

Just. *Dolben*. Now you are upon your oath, speak the truth.

Mrs. *Bolron*. No, never in his life did he threaten me upon any such account.

Just. *Dolben*. Do you remember when the constable came down to have you go before Esq; Lowther?

Mrs. *Bolron*. Yes, my Lord.

Just. *Dolben*. How chance you did not go with him?

Mrs. *Bolron*. I was unwilling to go then, because I could say little to the purpose.

Just. *Dolben*. Did he use any threats to you to make you swear against Sir Thomas?

Mrs. *Bolron*. No, my Lord, but he would have me go, whether I said any thing or no.

Just. *Dolben*. Did he ever desire you to speak any thing you did not know?

Mrs. *Bolron*. No, my Lord, never in his life.

Att. *Gen*. My Lord, Mr. Bolron desires to have this woman, his grandmother, be

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asked whether he threatened his wife?

[And she was sworn.

Sal. *Gen*. She was by at that time.

Just. *Dolben*. Were you by at that time when the constable came to carry the witnesses before Mr. Lowther?

Mrs. *Bolron, Sen*. Yes.

Just. *Dolben*. Hark you, did not you see the woman that went over there, cry, and say she was unwilling to go?

Mrs. *Bolron, Sen*. Her husband said she should go, though she said nothing.

Just. *Dolben*. But her husband did not press her to say any thing but what was truth?

Mrs. *Bolron, Sen*. No, indeed did he not.

Just. *Pemberton*. And did not seem to stick before.

Att. *Gen*. What can you say to this honest man here your son?

Just. *Dolben*. I'll warrant she will say he is honest still.

Att. *Gen*. But here are a company of people would make him a dishonest man.

Mrs. *Bolron, Sen*. Sir Tho. Gascoigne said he was as truthful a servant as ever he had in his life.

Just. *Dolben*. Did you hear him say so?

Mrs. *Bolron, Sen*. I heard him say so in his own chamber.

Just. *Dolben*. When?

Mrs. *Bolron, Sen*. After he was married: And besides Sir Thomas did say he would do any thing he could for him, in relation he had been a true servant to him.

Just. *Dolben*. Call Mr. Phiswick again. (Who appeared.) Look ye, Sir, you are a man that I see have been trusted by all the family of the Gascoigne's, and you know in what reputation he was.

Phiswick. Sir, while I was his fellow-servant I knew no ill by him.

Just. *Dolben*. Was he accounted an honest man?

Phiswick. I can say nothing to the contrary.

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Scj.

Serj. *Maynard*. Then my Lord to conclude, I desire to speak a word. On the one side here is an ancient gentleman's life in question, and that or his death are to be the issue of this cause; on the other side here is the discovery of a plot upon which all our lives, our religion, and the life of our King depend. It did require your patience, and you have yielded it. Where lies the question? If these witnesses that have been examined be believed, there is no question but he is highly guilty of the plot: The witness tells you, when there was no talk of the plot, there was a preparation of a false and fraudulent conveyance to be drawn by advice of counsel, and why was this made? Lest he should forfeit his estate. This is proved in the beginning. You find next a meeting of the Priests, and there what they did, does not concern this gentleman at the bar till he took notice of it, and then joined in it, and approved of it, and did declare it was a worthy plot, a meritorious plot for the good of the church, and at last particularly he would give 1000*l.* to Bolron to destroy the King and murder him. The other witness agrees with him, and what is said against all this? They have called and examined I think nineteen or twenty witnesses, three touching the threatening of his wife, but that falls out to be nothing; two alehouse keepers that stood at the bottom of the stairs and overheard their discourse; but you have all heard how they have contradicted one another, they had not agreed well enough together on their story. All that the rest do is meant thus, and so far they make something of it, that there should be a debt due from this Bolron to this gentleman, and so it were some contrivance as if he would do it by way of revenge; it does fall out many times that men do quarrel, but this is a business of another nature. They say that he should threaten he would serve him a trick, or there were some such words; but under favour, the

question is of the truth of his testimony; now it is not likely, that they knew what his testimony would be, and there is nothing against the other witnesses that concurs with him, but the fellows that were upon the stairs, that talk one of one part of the stairs, and the other of the other. The matter is clearly whether the witnesses be to be believed, or whether there be any thing sufficient offered to take off their testimony. You will be pleased to observe as to what was spoken about the money and the nunnery, we brought you a letter from the Priest who was mentioned to be one of them at the meeting, *Pracid*, that writes and dates his letter from the place the witness speaks of, and there you will observe that in one of the letters it is expressed "If England be converted," (there is the main of the plot) for all I suppose goes to that purpose, pray who thought of England's conversion at that time? What led them into that but a consciousness of a design to convert England? My Lord, another piece of a letter there is concerning the oath of allegiance, you have heard it read, and every body knows what the meaning of it is, it is the engine of the Jesuits that if they can but draw men off from their fidelity to the King, whereof there is no testimony so great as the oath of allegiance, they need not use so much of equivocation; but that is an abominable thing, and not to be endured to go take off the strength of that oath that hath been taken by men more honest than the rest, and not suffering the rest to take it at all: And it is a damnable thing that they should assert the King is an Heretick, and the Pope has deposed him, therefore it is meritorious to kill him; but you have heard the evidence fully, and it needs no aggravation.

Mr. *Sol. Gen.* My Lord, I think the evidence hath been already repeated by Mr. Serj. *Maynard*, and my Lord, I think there is nothing in this case, but only the credit

Credit of the witnesses, for if they be to be believed, there is an evidence as full as can be. I know your Lordship observes how it is introduced, how they are fortified in some circumstances, which Sir Thomas did at first deny. They tell you that he had a pious intent to found a nunnery, and did proceed so far as to make a settlement, this was deny'd by Sir Tho. Gascoigne, but hath been verified, and made out by his own books and letters writ to him, which were found in his own custody. This did Sir Tho. Gascoigne do with an expectation of a sudden change, for the letters do declare, that England was to be converted as they called it, and therefore they had settled their matters in order, and they thought fit to insert that proviso in the settlement, that if England should be converted, then the money was to be disposed so and so. But your Lordship likewise observes, and you, Gentlemen of the Jury, what other correspondence Sir Tho. Gascoigne had with one Cornwallis or Pracid a Priest. He receives a letter which shews you what the principles of all the Catholics are, how far they have proceeded to take away even the Oath of Allegiance, and the consequence of that how far it will go, when they think themselves obliged in conscience to cast off fidelity to their Prince, and what mischiefs may ensue no man knows, but we may in part imagine. You have already had sufficient discovery to make out the use of this instilled principle, and that is the design to kill the King, for this you hear what the evidence say. Mr. Bolron one of them is sent to the Priest to be instructed by him; and by him was chid for offering to go against their principles to take the oath, and told him he was damned for so doing. And presently after he was examined by Sir Tho. Gascoigne upon some discourse with him what Rushton had said, who had moved

him likewise to kill the King as he says. Sir Tho. Gascoigne knew to what purpose he sent him thither, not only to renounce the Oath of Allegiance, but to carry on the design which he had in hand, and did introduce by laying aside the oath, and tells him he must engage in the design to kill the King. He examines him what the other had spoke to him of, and he said he knew it was more than bare chiding of him for taking the oath of allegiance, and he told him for his better encouragement to go on, that if he would undertake, he should have 1000l. And this is the sum of Bolron's evidence as to Sir Tho. Gascoigne. What then says Mowbray, the second witness, he was so faithful a servant and so diligent, that he was employed by Rushton the Confessor to attend him at the altar, and being in service immediate about him, and he being by that means so dear to him waited upon him in his chamber, and was privy to all the consultations held there. And he gives you an account how long this plot hath been in agitation, for they had been discoursing a good while of it, and resolved it should be done if not by fair means, by foul, and tells you plainly by killing the King. And that he heard Sir Thomas Gascoigne himself declare that it was a meritorious act to kill the King, and that as before he had the oath of secrecy given him by Rushton, so he did declare (which Mowbray standing at the door heard) that he would never swerve from the oath, but he would assist to the utmost of his power, and they that were with him said, They would stand by it with their lives and fortunes; and when my Lady Tempest understood he was there, and was jealous of him, she bid him go down, and entertain the guests below stairs. So here is an evidence from two witnesses as full as can be in any case, that Sir Tho. Gascoigne was privy to the conspiracy, and himself partaker of it, to kill the King.

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All that hath been said against them, is to vilify their reputation. As to Mowbray I hear but little, only there are two witnesses that touch him; and indeed if these witnesses were to be believed, they say a great deal; that is, They were in an alehouse together, and heard them conspire to take away the Life of Sir Thomas Gascoigne. Indeed Mowbray said, for Sir Tho. Gascoigne I know nothing but that he is a very honest gentleman, but for my Lady Fempest, if I could hang her I would. That they should hear them contrive this together, and conspire how they should take away the lives of this gentleman and the others: Indeed, if these men say true 'tis a great matter to take off the credit of their testimony, but you heard gentlemen how they did vary; for the one said, as I apprehended, at first he was in the room, afterwards he was below stairs. Ask the one, Could you hear them? Yes. Could you see them? No; said the other Yes. So that they were not well provided, as to that matter, nor had they consulted that point well, where they should agree to stand to overhear the matter. Now if that be likely, they should in the presence of two persons whom they did not know, and one of them they never saw, but in the court, declare and discourse of such a matter as this for the taking away the life of Sir Thomas Gascoigne, then we have nothing to say to them, we must leave the credit of that to you, you will observe their variety in the story, and the improbability of the thing. But then for Mr. Bolron, the evidence against him is, that he is a very dishonest man, and that this is all out of malice to Sir Tho. Gascoigne, because he would sue him upon his bonds. You observe how he does behave himself under that prosecution; all that he hath he is willing to part with for payment of his debt, he makes over his estate for satisfaction and security, and does as much as

an honest man do, all he hath shall lie at stake: And as for Sir Thomas Gascoigne himself, he had no such opinion of him in point of dishonesty, for he declared he lived in his service without exception, and said before the Council, he knew nothing of dishonesty by him but only this information, and now he found him to be (what he always thought) a great fool. Now whether he thought him a fool for telling this story, or what else, you may explain the meaning of his expression; but as for any thing of dishonesty, there is nothing against Mr. Bolron. He was in debt 'tis true, but what he had lay at stake for the payment of it, and as far as it would go Sir Thomas might take it, but that for malice he should come to swear against him, there is nothing clearly made out. One witness says indeed, that he should say, Does Sir Thomas Gascoigne intend to sue me, then I will do what I did not intend to do; whether that be a speech of malice or no, or rather does confirm the truth of his evidence, is left to your consideration: It shews rather, there was something that he had in his power to do before any prosecution from Sir Tho. Gascoigne, or any occasion of his malice against him; it hath not the necessary import of a malicious speech, that he did intend not to do such a thing, and because he was sued did do it; that therefore is only truth and no malice. For the other matter that is said against him, That he should endeavour to suborn his wife to swear falsely, that was by no means fully proved, but rather that matter hath been sufficiently cleared, that though she said she knew nothing, yet he would have her go though she said nothing, and you hear what the evidence hath been for Mr. Bolron, that he never did press her to swear falsely, nor threaten her if she would not, but only desired her to declare her knowledge, if she knew any thing, the truth and nothing but the truth. These are all the objections made against the credit of the

the witnesses; and I think if their credit do stand, you cannot have a clearer evidence to convict any one that hath been given you to day; but that we leave to you, and submit these objections, whether they have any weight in them, and whether they have not been fully answered.

Mr. Serj. *Maynard*. And our evidence is given in all upon oath, and their's is not.

Mr. Just. *Jones*. Gentlemen, you of the Jury: The prisoner at the bar stands indicted for High Treason, and for High Treason of the highest nature, for conspiring to take away the life of the King, and for endeavouring to change the religion, the Protestant religion into Popery; that is, contriving to extirpate the religion of Protestantism here, and introduce Popery instead of it; and certainly greater crimes than these no man can be accused of. There have been produced, on the behalf of the King, two witnesses, Mr. Bolron and Mr. Mowbray, both of them servants to Sir Thomas Gascoigne the prisoner, and therefore might very possibly and probably enough be privy to all they have said and testified in this case. It does appear by them both, that Sir Thomas Gascoigne was a very early man in the plot (if they say true). We heard nothing of it till the long vacation (78) but it seems Sir Thomas Gascoigne was a plotter and conspirator in the year 75, or 76. And that he might be able to do this somewhat more safely, he contrives how he might convey away his estate to prevent the forfeiture; and he makes an assurance of it to Sir William Ingleby, colourably, as the witnesses swear, for 1000*l*. And it does appear likewise, as to the introduction of the Popish religion here, they began to settle a Nunnery, and it was fit to do so against England should be converted; first, in such a place; but if it happened England were converted, then to be removed

to another place. There was at this Nunnery appointed an Abbess, an assistant, and several Nuns; and Sir Thomas Gascoigne so well knew of this, that one of them that was appointed to be a Nun, at the time of her taking horse, he said to her, "There goes an old maid and a young Nun." And there are letters come from that very Nunnery, and from the Priest that was appointed to attend them as Confessor, which have been read to you. And there is another preparation thought necessary to introduce this plot, and that is, that all Papists might be seduced into an opinion, that it was a dangerous thing to take the Oath of Allegiance, and that it was a damnable sin: For this purpose letters came from the Doctors at Sorbonne, and they determine it to be so, lest any man of that religion should be so good a subject as to profess obedience to the King in temporals. Then the plot goes on between Sir Miles Stapleton, Sir Francis Hungatt, Sir Charles Vavasor, Sir Thomas Gascoigne, Mr. Gascoigne, Middleton, Rushton, my Lady Tempest, and a great company more; all met together and consulting in Sir Thomas Gascoigne's house, in his great room, his old dining-room, to this purpose, not only to bring in their religion, but kill the King expressly (so says the witness) I think they had often talked of it before the witness in the Priest's chamber; for he being then a Papist was privy to his master's design, and the rest of the confederates, for killing the King, which was the only thing they desired to effect, as the best way to bring in their religion; and there was great reason to do it they said too, for the King had not kept his word with them when he was in his exile, for they said, he had promised, if he was restored to his kingdoms, he would restore the Popish religion, but now he was returned, and had broke his promise, and nothing more was to be done, the Pope having declared him an heretic, but to destroy

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destroy him; and this was that which was agreed among them: The 30th of May last, after divers other consults had about it, the Priest Rushton being at Sir Thomas Gascoigne's house, Bolron is desired to go into the gallery, and there presently comes in Rushton, Sir Thomas's Priest; Bolron acquaints him that he had been at the sessions and taken the Oath of Allegiance: As soon as ever he heard it, he cries out, He had committed a damnable sin, he must of necessity renounce it, and repent of it, and he could give him a pardon, for he had an extraordinary power, more authority than others, he could give him absolution if he did repent of it, and that no Catholic must by any means take the oath. A while after they had a discourse concerning killing the King; and the witness says indeed he was not actually in the room, for he says he stood at the door, and heard all the discourse, till at last the Lady Tempest, one of the conspirators, taking notice of his being there, sent him down stairs.

Mr. Just. *Pemberton*. That is Mowbray.

Mr. *Mowbray*. I was called into the room and then sent down.

Mr. Just. *Jones*. 'Tis true, brother, that was Mowbray: But as to Bolron's discourse with Rushton; when Sir Thomas Gascoigne, who was not in the house at the time Bolron was with Rushton, but had given a charge he should not go before he had spoke with him: When he did come home and spoke with him, he takes upon him to go on with the discourse concerning the plot, and he swears positively that he offered he would give him 1000l. and this he swears he should have paid him in London. This is expressly the testimony of Bolron. Now what says Mowbray? He tells you (though that is but introduction to make his evidence more probable) That there was great resort of Priests to the prisoner's house. He tells you of the discourse and consultation the Priests had in the house,

and that it was expressly and precisely for killing the King. He tells you, that he did stand at the door and heard it, as I observed before; and he tells you too, which hath not been observed, that at that time there was produced a list of four or five hundred persons that had engaged in the design of killing the King; he did see the list, he did see Sir Thomas Gascoigne's hand, which he very well knew and was acquainted with, and which might very well be, being his servant. So that here is not only a discourse and agreement by parol, that he should be in the conspiracy, but if you believe him, he says, that here is actually the hand of Sir Thomas to the engagement to do the villainy; and truly they that were of that persuasion at that time might easily be induced to it. For it was agreed amongst them, that they should have a plenary indulgence of ten thousand years, and it was a meritorious act; and though Sir Thomas perhaps was not so ready to contribute in all things, yet hearing of the meritoriousness of the act, and withal that he should be canonized for a saint for this piece of piety, he certainly might readily consent to it. Mr. Mowbray indeed was asked, Why he did not discover it sooner? He tells you why, He was in fear of the Papists, he was threatened; and very like he might be possessed with fear, and so might a man of greater constancy till the business was discovered; and therefore he did not talk of it in the country, but came up here, where it was more safe to discover it, and hath been here ever since. Besides this testimony of these witnesses, gentlemen, there are some papers produced, some that mention money that hath been conveyed by Sir Thomas Gascoigne, in confirmation of the testimony of Bolron the first witness, who does swear, that he heard Sir Thomas say, he would send 3000l. to the Jesuits to go on and prosecute this plot; and afterwards he did hear him say, he

he had sent the 3000*l.* that he had promised. Now it does appear by Sir Thomas's almanack that he had sent several sums; his receiver Phiswick did speak of 6000*l.* and he himself did give a touch towards it. Indeed Phiswick was a receiver for Sir Thomas, and likewise for his son, and for the Lady Tempest; but it is impossible, if they had sent all the money that ever they had, and considering too, that the Lady Tempest, as appears by the witnesses, lived in the country, that it could have amounted to near that sum of money; for she had but 300*l.* a year, and the eldest son had but 400*l.* a year, how then could 6000*l.* be returned for them in four years time? 'Tis true, there is some answer given as to that 600*l.* by that witness Hobart, who says there was a suit, and 100*l.* a year decreed to be paid to Mrs. Appleby, Sir Thomas's neice, for so many years, and he to take care of sending that to her; and though that was but 100*l.* a year, yet there was a decree, or some order, to pay the arrears with the other money, which made it up 900*l.*

The evidence for the King against the prisoner is but two witnesses, but they as positive and express as possibly can be. What then is said by the prisoner, or the witnesses in his defence? There is one, that is Shippson, that gives some testimony against the very evidence, and the possibility of it to be true in one part of it: For Bolron he tells you, that the 30th of May was the time when there was that consult held at Sir Thomas Gascoigne's in the gallery with the Priest, that he staid there till night, and that then Sir Thomas talked with him and made this profer to him for the murder and destruction of the King. Here comes a witness, Shippson, and tells you, that the very 30th of May, Bolron was at his house at two o'clock, and staid an hour or two after sun set: If that were true, that he was there all that time, it is not then true

that he speaks of about Sir Thomas Gascoigne; and it was impossible that he should be at the consult at that time when he says he was there, and afterwards spoke to Sir Thomas Gascoigne. Now, gentlemen, you have the King's witness upon his oath; he that testifies against him is barely upon his word, and he is a Papist too, for that he was asked, and he did confess himself so. I do not say that a Papist is no witness, a Papist is a witness, and he is a witness in a Papist cause, and for a Papist; but I must tell you, there is less credit to be given to a Papist in a cause of this nature, who can easily believe they may have indulgences and pardons enough for saving one from the gallows who is to be canonized for a saint if the plot take effect. He hath only affirmed it who is a Papist, the other who is a Protestant swears what his evidence is.

Mr. Babbington, who was the first witness examined for the prisoner, he tells you there had been some debates and differences about rent and money that was owing by Bolron to the prisoner. He laboured and interceded often on his behalf, but at length not being able to prevail that he should not be sued; the witness swears, I will then do that which I did not intend to do. What he meant by it is doubtful, and it is an ambiguous speech, but to interpret it that he would swear falsely to take away a man's life, and so commit both murder and perjury, is hard to infer and conclude from such doubtful words. There are some witnesses that tell you, that is, Moor, and others, that Bolron did say and swear that Sir Thomas Gascoigne was never concerned in the plot: That might very well be, especially if you take the time when he did say this, he was a Papist a great while after Sir Thomas had engaged himself in the plot, and while he was so, it is not unlike he would venture an oath to save any of the same persuasion and religion he himself was of. But whatsoever

soever he said it was not judicially, he was not bound to discover to him he spoke to, he is now upon his oath, and you have heard what an express testimony he gives. As to what is said concerning his wife, that he should endeavour to persuade her contrary to her knowledge to give testimony against Sir Thomas Gascoigne, and therefore he is not to be believed here upon his own oath, who would have his wife forswear herself to fortify him: There is no such thing, and it does appear by the evidence of those that are sworn, that he was earnest, and would have his wife go and testify her knowledge; but did not infuse or intimate any thing to her she should say, whether she did know it or no: And to assure you that, you have the oath of the woman herself, who hath been present here, and tells you the same thing. Dixon he comes and says, in August last, Mowbray said he knew nothing of the prisoner, which may be answered by his fear; but concerning the two witnesses that Mr. Solicitor did take notice of, he did tell you, and it is plain, how very improbable it was two persons should speak in the presence of strangers, and tell them they were about to take away the life of another person, the one of the Lady Tempest who had done him a displeasure, the other of Sir Thomas Gascoigne, but Mowbray at that time said he knew nothing of Sir Tho. Gascoigne; but gentlemen, besides what was said before, this is improbable any such thing should be, and you hear the witnesses, at least one of them, that he never knew one of the two.

Bolron. I knew neither of them.

Just. Jones. I should be very loth to omit any thing on the witnesses side, or that hath been materially testified against them on the prisoner's. I did not conceive the evidence given by Mr. Pebles to come to any thing at all. There was a discourse between Bolron and him at last assizes, after

some talk Bolron tells him he had something to say to him, and what was it? Bolron was told that he had charged some persons that he ought not to do, (excused them for money that did not take the oath of allegiance as they ought to have done) and it seems he did it here, and so far he went as to bring witnesses before the Justices of Peace to prove it. And although they did not give evidence against Mr. Pebles in that very particular, yet certainly he thought they would have said something, but that does not argue at all, that because he did accuse Mr. Pebles (as he thought justly in that particular) therefore that now he should falsely accuse Sir Thomas in a matter that concerns his life so highly. There are some other things that were said by the witnesses that would tend towards the proving of some malice in the witnesses towards Sir Tho. Gascoigne, and therefore they give in this evidence: One thing indeed was spoken by Higgringil, that is, it was generally reported in the country that Mowbray had taken away money from Sir Tho. Gascoigne, and that Mowbray himself said, that as they had endeavoured to take away his fame and life, now he had found an opportunity to requite them. So saith the witness, but it is not very probable. I leave it with you upon the credit of the witnesses for the King, who have sworn it upon their oaths, and the others that go upon their words, and not their oaths, whether they have taken away the force and strength of the King's evidence which is as full, express and positive as can be by two witnesses.

Gentlemen, here is on the one side the life of an ancient gentleman before you, on the other side there is a conspiracy against the life of the King, who is the breath of our nostrils, and whom God long preserve. I know you being upon your oaths will take into your considerations both, and give
a verdict

• verdict according to the evidence you have heard.

Just. *Dolben*. I will tell you, gentlemen, I cannot forbear saying one thing to you. There is some evidence that makes it a very improbable thing to be true what Mr. Bolron hath said, and yet Mr. Bolron having said it so positively, and Mowbray agreeing with it, probabilities must give way to positive proofs. I saw you did observe it when it was mentioned, and it is true, to me it seems improbable that at the very same time that Sir Thomas Gascoigne should sue him upon his bond, and take a course to turn him out of his house, that he should then be privy to such a conspiracy; it is improbable either that Sir Thomas should offer him such a sum of money to kill the King, or if he had, that he should afterwards take that course at law against him. Now for that I say this to you, you are to give a verdict according to your evidence. They have such secret contrivances amongst themselves (and he was a Papist at that time) that where there are two men that positively tell you a thing that lies within their own knowledge, and swear it is true, it is scarce any improbability that should weigh against such an evidence.

Just. *Pemberton*. And, gentlemen, consider withal as to that, for truly my brother Dolben hath rightly minded you of that improbability, for it was no more: But then you must consider all the circumstances. It is indeed at the first blush improbable that a man would communicate so great a secret to another, if he did intend to sue him for money he owed him, but then it is likewise as improbable that he would provoke him by a suit if his life were in his hand; but consider the delivering of the lease of ejection, and those things were the 13th of June.

Babbington. But I had sued him before, my Lord.

Just. *Dolben*. The 2d of June he says.

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Babbington. I had direction long before I did it.

Just. *Pemberton*. They threatened him the second, but they did not do it. But look you, gentlemen, consider this, I do not doubt but Sir Thomas Gascoigne was sure that this man durst not discover any thing of this, for they had given him the sacrament and an oath of secrecy, which they look upon as a tie among themselves, as long as they continue in that religion, not upon any account whatsoever to be undone, and they have such confidence in it that they will trust their lives and every thing in a man's hand when they have given him that oath. Alas! how could these people have the confidence to plot one with another as they do, when they know their lives are in the hands of any one of all the rest, but upon this account? Do but swear them unto secrecy and give them the sacrament of the mass upon it, and then they think such a one is proof enough against any thing in the world, for that is damnation if they break it, as their Priests tell them, but I doubt not but Sir Thomas thought he had them as fast as can be upon that lock. But as to Sir Thomas's evidence of those two men at Leeds, this is after the accusation of Sir Thomas that they spake of, and can any man alive believe that they would go and plot to contrive the death of these two persons in the face of two strangers, after he was accused? It is so strange an evidence that no man alive can believe it to be truth. Look you, gentlemen, persons that go to contrive such things as these are, go in secret; and hope they should never be discovered, but by one of themselves. Who would contrive when two be by, and if they say true, might see them as well as hear them, though they did contradict one another in their evidence, the one said he was above, the other said he was below, the one said he might see them, the other not. Look you,

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gentlemen.

gentlemen, I do see that they do lay some stress upon this, that he was his debtor, for that they seem to prove by their witnesses, but you must lay no great stress upon that at all, for the money were not quit if Sir Thomas were found guilty, the money is due to the King then, he saves nothing by it, his money must be paid let the prisoner be found guilty, or not guilty, it is all one to him. You must consider this case, gentlemen, if you believe these men are perjured men, and have gone and contrived a malicious design against a man's life; then God forbid they should be believed any way, but it is a positive evidence, and it is not an evidence barely of itself, but introduced by a great many circumstances that went before, they tell you the whole affair, that it does seem they have been privy to the affairs of these Jesuits all along, and Sir Thomas Gascoigne's house hath it seems abounded with them, he hath been very beneficial to that sort of people, mighty charitable as they call it in superstition, and you must consider that nothing can seem strange to them that will be ridden by Priests, they put them upon all the immoralities and villainies that can be found out for the cause of religion as they call it; nothing

can seem strange that is testified against them. Therefore I must leave it to you upon what you have heard, and upon their credit whether you believe the witness or not

Just. Jones. Ay, it is left upon their credit that are your own country-men, better known to you than us.

Just. Dolben. Look you Sir Thomas Hodgson, and the gentlemen of the jury, if you will come in again in any time, we will stay in court, otherwise you must lie by it all night, for we can take no privy verdict in this case.

Just. Pemberton. Ay, we will stay, and hear motions a little while.

Then the jury withdrew from the bar, and after half an hour returned again, and being called over gave their verdict thus.

Cl. of Cr. Sir Thomas Gascoigne hold up thy hand. Look upon the prisoner: How say you, is he guilty of the High Treason whereof he stands indicted, or not guilty?

Foreman. Not guilty.

Cl. of Cr. Did he fly for it?

Foreman. Not that we know of.

Then the verdict was recorded, and the court rose.

The TRIAL of ROGER EARL of CASTLEMAINE.

ROGER PALMER, Earl of Castlemaine in the Kingdom of Ireland, having been Arraigned at the King's-bench Bar, the 16th of June, 1680. for High Treason: To which he pleaded, Not Guilty, &c.

Wednesday the 23d of June, 1680, being appointed for his Trial: The Court being sate, and the usual Formalities performed; the Lieutenant of the Tower delivered him into Court: And then the said Court proceeded as followeth:

Cl. of Cr. **C**RYER, Make proclamation.
Proclamation for Silence.

Cryer. O yes! Our Sovereign Lord the King doth strictly charge and command all manner

manner of persons to keep silence upon pain of imprisonment.

O yes! If any one can inform our Sovereign Lord the King; the King's Serjeant at law; the King's Attorney General, or this Inquest now to be taken, of the High Treason, whereof Roger Palmer, Esq; Earl of Castlemaine, in the kingdom of Ireland, stands indicted, let them come forth and they shall be heard; for the prisoner stands at the bar upon his deliverance.

Cl. of Cr. Crier, make an O yes.

Crier. O yes! You good men that are empannelled to enquire, between our Sovereign Lord the King and Roger Palmer, Esq; Earl of Castlemaine within the kingdom of Ireland, answer to your names:

Cl. of Cr. Roger Palmer, Esq; Earl of Castlemaine in the kingdom of Ireland, Hold up thy hand: These good men that were lately called and now here appear; are to pass between our Sovereign the King and you upon your life or death: if you challenge any of them, you are to speak as they come to the book to be sworn; and before they are sworn.

Jury.

Sir John Cutler, Kt. Fr. Dorrington, Esq; Bart.

Sir Reginald Folter, Hugh Squire, Esq; Bart.

Henry Herriott, Esq; Charles Good, Esq; Rich. Cheney, Esq; John Pulford, Esq; Tho. Johnson, Esq; Edw. Claxton, Esq; John Roberts, Esq; Fr. Mayhew, Gent.

Crier. O yes! Our Sovereign Lord the King doth strictly charge and command all manner of persons to keep silence upon pain of imprisonment.

Cl. of Cr. Roger Palmer, Esq; Earl of Castlemaine in the kingdom of Ireland, hold up your hand.

You Gentlemen of the Jury that are now sworn, look upon the prisoner and hearken to his charge.

You shall understand that he stands indicted by the name of Roger Palmer, Esq;

Earl of Castlemaine in the Kingdom of Ireland; for that he as a false traitor against our most illustrious and excellent Prince and Lord, Charles the Second, by the grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. and his natural Lord; not having the fear of God before his eyes, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, his cordial love, true, due and natural obedience which true and faithful subjects of our said Sovereign Lord the King ought to bear towards him, altogether withdrawing and contriving; and with all his might intending to disturb the peace and common tranquillity of this kingdom, and to bring and put our Sovereign Lord the King to death and final destruction, and alter the true worship of God within this kingdom established, to the superstition of the Romish church, and to stir up and move war against our said Sovereign Lord the King within this realm of England, and to subvert the government thereof, the twentieth day of June, in the thirtieth year of the reign of our said Sovereign Lord, Charles the Second, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. at the parish of St. Giles in the Fields in the county of Middlesex, with divers others false traitors, to the Jurors unknown, did traiterously imagine and intend the killing, death and final destruction of our said Lord the King, and to change and alter and utterly subvert the ancient government of this kingdom, and to depose and wholly to deprive our said Lord the King of his crown and government of this realm of England, and to extirpate the true Protestant religion: And to accomplish and fulfil the same most wicked treasons and traitorous imaginations and purposes aforesaid, the said Roger Palmer, Esq; Earl of Castlemaine in the kingdom of Ireland, and other false traitors to the Jurors unknown, the same twentieth day of June, in the thirtieth year aforesaid

said, with force of arms, in the parish of St. Giles in the Fields aforesaid, in the county aforesaid, advisedly, devilishly, maliciously and traiterously did assemble, unite, and gather themselves together, and then and there advisedly, devilishly, maliciously, subtilly and traiterously did consult and agree to bring our said Sovereign Lord the King to death and final destruction, and to deprive him of his crown and government of England, and to introduce and establish the religion of the church of Rome in this kingdom; and the sooner to fulfil and accomplish the same most wicked treasons and traiterous imaginations and purposes aforesaid, he then and there did falsely, maliciously and traiterously promise divers great rewards, and did pay divers sums of money to several persons unknown; and then and there falsely and traiterously did write divers notes, to incite several other persons to accomplish the treasons aforesaid, against the life of our Sovereign Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

Cl of Cr. Upon this indictment he hath been arraigned, and hath pleaded thereunto, Not guilty, and for his trial he puts himself upon God and his country; which country you are.

Your charge is to enquire, Whether he be Guilty of the High Treason whereof he stands indicted, or Not Guilty? If you find him guilty, you are to enquire what goods and chattels, lands and tenements he had at the time when the High Treason was committed, or at any time since? If you find him not guilty, you are to say so and no more; and hear your evidence.

Cryer. O yes! If any one will give evidence on the behalf of our Sovereign Lord the King, against Roger Palmer, Esq; Earl of Castlemaine in the kingdom of Ireland, let him come forth and he shall be heard;

for the prisoner now stands at the bar upon his deliverance.

Mr. Bonithon. May it please you, my Lord, and you, gentlemen of the jury, the prisoner at the bar stands indicted for High Treason; for that he intended to disturb the peace within this kingdom established, and to destroy and alter the government, and to bring the King to death and final destruction, and to alter our religion to the superstition of the church of Rome, did on the 20th day of June, in the 30th year of the reign of our Sovereign Lord the King, consult and treat with several other persons, and that he with these persons did agree to destroy the King and alter the religion, and cause rebellion; and further to accomplish these treasons, he did promise and agree to pay several accompts and deposit several sums of money, and did likewise write and publish several books.

To this he hath pleaded not guilty; if we prove these things, you are to find him guilty.

Att. Gen. [Sir Creswel Lewins.] May it please your Lordship, my Lord Castlemaine here stands indicted for High Treason; that is, "For designing to murder the King, and alter the government and law." And this is but a parcel of the plot, which hath been carrying on a great while, and many persons tried for it, and some have suffered and been executed for it: And, my Lord, we will give your Lordship evidence, "That my Lord Castlemaine hath at several times conspired the death of the King, and he hath reprov'd persons for not doing it." And, my Lord, he hath been in consultations among Jesuits, where these matters have been carried on, and this whole design hath been negotiated: And my Lord Castlemaine hath been consenting and agreeing to all these matters. And, my Lord, when the trials were in hand, it did appear upon those trials there were many persons brought from St. Omers to be witnesses against Dr. Ques,

to prove he was not in England at that time when he said in his depositions that he did consult with the Jesuits; and these persons my Lord Castlemaine had the management and instruction of at that time: And all along at the Old Bailey my Lord Castlemaine was present there, and did countenance these persons, and was an intercessor for them. These are but branches and circumstances; what is material we will prove by witnesses.

Att. Gen. Come, Dr. Otes, pray tell what you know.

Prisoner. My Lord, I have a long time wished for this day; and your Lordship may very well remember it. The reason why I have so much desired a trial is, because I thought it a means, and the best means; and the only means to shew to the world my innocence, and also to shew to the world how much I have been calumniated by this charge.

L. C. J. [*Sir William Straggs.*] What have you to say, have you any thing to say against Dr. Otes?

Prisoner. No, my Lord: I only say this, here I am a prisoner at the bar, and I have pleaded, Not guilty, and throw myself upon this court; and therefore I am very willing to hear what this man will say.

Otes. My Lord, I humbly move the court, Whether or no I may use my own method?

L. C. J. Give your charge, we direct nothing.

Otes. My Lord, in the year 1677, I was sent over into Spain by the Jesuits that were here in England; where I remained for several months, and transacted business for them; and, my Lord, I returned from Spain in November, and brought several letters from some English fathers there; among which there was one directed for my Lord Castlemaine. My Lord, I did not deliver the letter to him, but, my Lord,

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the contents of the letter were to this effect—

L. C. J. How came you to see the contents?

Otes. My Lord, I was at the writing of the letter, and so I did see the contents of it.

L. C. J. Did the Priests shew it you? Or did you only see it yourself?

Otes. No, my Lord; it was shewn me by them: And the contents of this letter were; "That the fathers in Spain were very zealous to concur with the fathers here in England in the design; which was the subversion of the government, altering the religion, and the destruction of the King."

L. C. J. Was that in the letter?

Otes. No, my Lord, not in words at length.

L. C. J. What was, as far as you know, the very expression of the letter?

Otes. The word "Design," my Lord.

L. C. J. Only that, to promote the design?

Otes. Yes, my Lord; and under that word we did comprehend all those things, that is, as we usually took it among one another.

L. C. J. Did you deliver this letter to my Lord Castlemaine?

Otes. No, my Lord, I did not deliver this letter; but when I went to St. Omers we received an account from my L. Castlemaine of his receipt of this letter.

L. C. J. What did you do with it?

Otes. I left it with the provincial, my Lord, who was then Mr. Strange.

L. C. J. Was it not given to you to give it to him?

Otes. It was given me to give the Lady Castlemaine; but being then a stranger to him, I was willing to lend one of his own messengers with it.

L. C. J. Where was my Lord?

Otes. I can't tell, my Lord, I did not see them then; I went over to St. Omers

in December 77, or the latter end of November.

L. C. J. Where were you when you gave this letter to the Provincial?

Otes. I was in London, my Lord.

L. C. J. Where did you receive this letter?

Otes. In Spain, my Lord, at Valladolid, of one Armstrong.

L. C. J. Who was it directed to?

Otes. To my L. Castlemaine; but I did not then know him, and so I gave it the provincial, my Lord; I went over to St. Omers in the latter end of November, or the beginning of December 77, and after I had been there some few days, there did arrive a pacquet from London to St. Omers, in which there was a letter from my L. Castlemaine.

L. C. J. To whom?

Otes. To the fathers of the Society of St. Omers; in which my L. Castlemaine gave them an account of a letter that he had lately received from Spain.

L. C. J. How did you know the contents of this letter?

Otes. My Lord, I was privy to their letters.

L. C. J. Was you acquainted with my L. Castlemaine's hand?

Otes. My Lord, I will give you an account of that; I did not know it then, but only as it was generally said amongst us.

L. C. J. How was it subscribed?

Otes. Castlemaine, my Lord; and sometimes my Lord, he subscribed himself Palmer.

L. C. J. How many letters have you seen?

Otes. Several letters.

L. C. J. Was this the first?

Otes. This was the first, as near as I can remember. And, my Lord, he gave an account in that letter, that he had received a letter from Spain, and was glad the fathers in Spain had so good an opinion of his integrity in the cause.

L. C. J. Did he say from whom he had received it?

Otes. My Lord, I can't remember that; that he had received a letter I am certain.

L. C. J. Do you know what the purport of the letter was?

Otes. Yes, my Lord, I will give you a plain account. My Lord, he wrote he had received a letter from Spain, and that he was glad the fathers in Spain had so great confidence in his integrity. And, my Lord, in March there came another letter from my L. Castlemaine; for my L. Castlemaine had left some things at Liege, wherein he did complain of the fathers, that they made no more haste for to send his things to him; some odd things he had left there; and, my Lord, he gave an account of a certain letter he received from the Rector of Liege, whose advice he did not like; for the Rector of Liege and the Rector of Gant, were mighty zealous that the secular-clergy should be personally present in this affair.

L. C. J. Did he write so? I would have you say what he writ.

Otes. My Lord, I have told you, he gave an account, that he was unwilling to have the secular clergy engaged, because they were a loose sort of men, and of no principles, and therefore he thought them not fit to be trusted. My Lord, in April there was a consult; I came over from St. Omers in April, some three, or four, or five days before the consult, I am not able to guess at the particular time, but it was near upon the consult. My Lord, this consult was divided into several companies, after they had met at the White Horse Tavern, wherein they did some things that did relate to the order, as to send Father Cary to Rome. After that they had divided themselves into several companies, wherein they did agree in ordering the death of the King.

L. C. J. You were by?

Otes.

Otes. My Lord, I was employed by them to give an account of the sense of one company to another.

L. C. J. Were you by when they concluded the death of the King?

Otes. Yes, my Lord, I was then present.

L. C. J. Did you sign among the rest?

Otes. My Lord, I don't come here to accuse myself.

L. C. J. You are pardoned if it be so.

Otes. My Lord, I did consent. My Lord, in this consult they met together, and an oath of secrecy was administered; my L. Castlemaine was there too within some few days after the consult: That is, the gentleman whom I accuse for treason, I say, did come, and enquired about the copies of some letters for to be sent up into Germany, and did desire, that an agreement between them and the monks might be made up, there being a difference between them, so that they might have the assistance of that order to carry on the design.

L. C. J. What gentleman was this?

Otes. It was the prisoner, my Lord, at the bar?

L. C. J. Would the gentleman let you hear him say, that he desired assistance to carry on the design, and you a stranger to him?

Otes. My Lord, I do not think I was a stranger to him so much as he was a stranger to me; he knew I was their servant, and employed by them.

L. C. J. Would he say in your hearing, that he desired their assistance to carry on the design, and you did not know him?

Otes. My Lord, I did not well know him at that time; and I brought several messages from the fathers, and from Mr. Langhorn, and I gave them an account before him.

L. C. J. How often had you seen him?

Otes. That time he was there, my Lord.

L. C. J. How many messages had you?

Otes. I will tell your Lordship where I

had been: I had been at Mr. Simmond's, who was then Confessor to the Earl of Arundel, who is since turned Protestant; Confessor to him as he pretended, and we looked upon him to be. And I had been at Father Cain's, who was in Turnmill-street; and I had been, my Lord, at Mr. Langhorn's in the Temple; and some other places which I do not now remember, it is so long since. So, my Lord, I gave them account of my business, and I did see that gentleman, but did not know his name till, my Lord, in June.

L. C. J. When was this?

Otes. This was, my Lord, as near as I can remember in May?

L. C. J. So you did not know his name till three weeks or a month after.

Otes. No, my Lord, it was in the latter part of June.

Just. Jones. You saw him first in May?

Otes. Yes, my Lord.

Just. Jones. And you did not see him till after the consult? I don't ask you whether he was there or no? But whether you saw him before the consult was signed?

Otes. No, my Lord.

L. C. J. How did you come to know his name?

Otes. My Lord, in June Mr. Langworth and I were going over Lincolns-Inn Fields, intending to go to the Fountain in Fullers Rents, because there was a sort of drink that he loved, and we were to drink together, it was in the evening; and so, in our way as we went we met with my L. Castlemaine, whom Mr. Langworth did salute, and then we came back to Mr. Fenwick's chamber.

L. C. J. With whom did you come back?

Otes. With my L. Castlemaine.

L. C. J. Did you know his name?

Otes. Mr. Langworth told me, it was the prisoner at the bar, my Lord, and the prisoner at the bar was giving an account of some letters he had received out of the country;

country; and Mr. Langworth was giving him an account how forward the Rector of Liege and the Rector of Gant were in offering to have the secular clergy engaged with them; and some other discourse they had which I can't remember, but about the design.

L. C. J. What did they talk of at that time? You must as near as you can, tell us what discourse they had.

Otes. I will give your Lordship this, they were speaking of the transactions of the consult, and how unanimous the fathers were in signing the consult.

L. C. J. Who was speaking of it?

Otes. Mr. Langworth and Mr. Fenwick, and my L. Castlemaine was present.

L. C. J. They did talk of it?

Otes. Yes.

L. C. J. Did they mention the particulars of that consult?

Otes. Yes.

L. C. J. What was that?

Otes. Laying aside the King.

L. C. J. And what else?

Otes. And bringing in the Popish religion, the Catholic religion, I speak their own words.

L. C. J. And this discourse they had in the hearing of my L. Castlemaine?

Otes. Yes; and my L. Castlemaine said, "Now he should be revenged for the injuries done to him."

L. C. J. Go on.

Otes. I have nothing else to say of my L. Castlemaine that I can think of at present.

L. C. J. Now, my Lord, you may ask him what questions you think fit.

Prisoner. Mr. Otes, Repeat your journey again.

Otes. My Lord, I say this; I went a ship-board in April, I returned from Valladolid in November, I arrived in London in November, and staid in London some time, and then I went to St. Omers in November or December, new stile or old

stile, I staid at St. Omers, from thence I went to Watton, then, my Lord, in the month of March we went to Liege, and returned back again; in the month of April we came hither, some time before the consult, and staid here some time after.

Pris. What time were you at Liege, pray Sir?

Otes. In March 77.

Just. Jones. The end of 77?

Otes. No, my Lord, we were at St. Omers again in March.

L. C. J. You returned in March 77-78.

Otes. Yes, my Lord, the stile doth so alter.

Pris. That is before Lady-day?

Otes. Yes, my Lord, it was before Lady day, we arrived here in London in May or in April, and we staid here some few days.

Pris. When did you come over again, pray Sir?

Otes. My Lord, it is now two years ago, or better, and I can't remember every particular time; my Lord, we were here in May.

Pris. I will ask him as many questions as I think reasonable, and when, my Lord; I do desire times, and he can't tell the times, he must tell me so?

L. C. J. Mr. Otes, answer my Lord what questions he asks you.

Otes. I will tell my Lord Castlemaine as near as I can remember, my Lord.

Pris. Mr. Otes, When was it you came over?

Otes. Really it was some few days before the consult.

Pris. How many days do you think?

Otes. Really I can't remember.

L. C. J. I suppose you have your memorials.

Otes. Really, my Lord, no.

L. C. J. Have you any thing more to ask?

Pris. Yes, my Lord, a great many questions. Were you present, Mr. Otes, pray,

pray, at that consult, when I consented to the King's death? Was you by?

Otes. I was present at the consult; but I do not charge you to be at the consult.

L. C. J. He asks you where it was he agreed to it?

Otes. At Mr. Fenwick's chamber, I remember it was about seven or eight o'clock that we were going over Lincoln's-Inn Fields.

L. C. J. How long might you be at Fenwick's?

Otes. It was about eleven or twelve o'clock I came away.

Pris. When you met me in Lincoln's-Inn Fields, was I in a coach or on foot, or was any body with me?

Otes. I can't say whether your Lordship had a man with you or no.

L. C. J. Was there any body with him?

Otes. I did not take notice of that.

L. C. J. You were two hours together, pray let me ask you this question, What was your discourse about?

Otes. That was part of the discourse, my Lord.

L. C. J. What? You have given us a very short account of it in four lines: You were two hours together, What was the main of your discourse about?

Otes. My Lord, I will give you, as plainly as I can, the discourse at that time.

L. C. J. Pray let us know what the main of your discourse was about.

Otes. One part of their discourse was about the revenues of their colleges, and how they had suffered by the French's taking St. Omer's, and what losses they had sustained by reason of the change of government by the conquest; for the crown of Spain had entailed on the college of St. Omer's five or six hundred a year for the maintaining the foundation of their house, or foundation-rent, and it was taken away by reason of the conquest that France had

made over the Spanish dominions there; and they were consulting how they should write to Father Le Chese, to be an instrument to move the French King to restore this annuity, that was a settlement entailed upon it.

L. C. J. How came you into this discourse.

Otes. This was after the other discourse.

L. C. J. How came you to discourse this affair here in England?

Otes. I will tell your Lordship as near as I can remember: When we met in Lincoln's-Inn Fields, Mr. Langworth recommended me to my Lord Castlemaine, and bade me take notice of him. I can't say this is my Lord Castlemaine, but this is that man I saw.

L. C. J. Did he call him by his name?

Otes. He told him that I was such a one, and that I was serviceable to them. And upon our way as we went to Mr. Fenwick's chamber, he inquired into the causes of my coming over so soon again, for he said, I went over but last month. Said he, "How came it to pass he came over so soon again?" Saith he, "We wanted him to do some business for us." And there were more particulars of the transactions of the consult mentioned to my Lord Castlemaine.

L. C. J. How did they bring in the particulars of that design?

Otes. This is as near as I can remember.

L. C. J. How came they to talk of laying aside the King and bringing in the Catholic religion?

Otes. My Lord, after they had given an account of the transactions of the consult: This was one part of the consult.

L. C. J. Pray how came they to bring it in, in discourse?

Otes. My Lord, they spake of the particulars of it.

L. C. J. I

L. C. J. I wonder what introduced the particulars: Was it to acquaint him with those particulars?

Otes. My Lord, I have nothing to say to that, they were things so generally talked of by those of the Jesuitical party, that whenever they met, they scarce did talk of any thing else but of that, and so they did at this time.

L. C. J. Pray tell me the whole discourse, as you can remember, that relates to this time.

Otes. My Lord, I have told your Lordship, we met with my Lord Castlemaine in Lincoln's-Inn Fields. I have told you, my Lord, that we went to Mr. Fenwick's; I have told you, my Lord, that after some discourse (how it was introduced I cannot be positive, but as I can remember) they were speaking of my going over and coming again so soon, my going from the consult to St. Omer's, and returning again into England so soon, and so one word brought in another.

L. C. J. Did you know then that my Lord Castlemaine had ever heard of this matter before?

Otes. My Lord, I don't know; but I am morally certain as to myself; but I can't swear he did?

Att. Gen. Did he speak of it to him as a stranger to it?

Otes. No.

Just. Jones. By the letter you spake of he knew before.

L. C. J. Answer my brother's question, Was the letter you had seen, before or after that discourse at Fenwick's?

Otes. My Lord, that was after the consult.

L. C. J. Then you know he did know of the design?

Otes. My Lord, I think not of the particulars of the design.

L. C. J. That is, he knew of this design for the main. When you talk of the design, you always mean the consult.

Otes. No, my Lord, when we say the consult, we mean what was agreed on at that consult, not concerning these matters that were done six months before.

L. C. J. Mr. Otes, tell me when you mention the design and the consult, Do not you always mean the death of the King and the bringing in Popery?

Otes. Yes, my Lord, but the terms are not convertible: For, when we say the consult, there was something else done, as that consult which had not an absolute relation to the design, and of that I will give you one instance, as the sending Father Cary to Rome, which they did in some three years.

L. C. J. Some trivial matters concerning their own government, but the thing you talk of is the same consult and design.

Otes. When I speak of the word design, it was so taken among us, and so received by my Lord Castlemaine.

L. C. J. How can you say it was so received by him?

Otes. Because he used the same word, and answered us according to our interpretation.

Just. Jones. My Lord, he speaks of the design thus, There was a design for the killing of the King, there was a design of the Priests and Fathers for it; but saith he, *Afterwards there was a general consultation*, and this design came to be formed by this general consult, which my Lord Castlemaine, as he thinks, had no knowledge of till the time they met together in Lincoln's Inn Fields, and afterward went and discoursed about it.

L. C. J. It is very fair, that he doth not know that my Lord Castlemaine had any knowledge, before the consult, of this business; but, he says, "The design upon which the consult was, that he might know, which was to destroy the King, and bring in Popery." And he says, my Lord Castlemaine did understand this word design in that

that sense they did; because he answered their letters according to their interpretation of it. How do you know he understood the word design in its utmost capacity as you understood it?

Otes. When we have our words, we have our keys whereby we understand them. But I will answer this question to the satisfaction of the gentlemen of the jury. He hath many times spoken in his letters of introducing the Popish religion, and annexed it to the word design of promoting the Catholic religion here in England.

L. C. J. Now methinks you have brought the word design to something else than killing the King.

Otes. Yes, the subversion of religion and the government.

L. C. J. Did he put in government? Did he talk of bringing in the Catholic religion and altering the government.

Otes. No, I won't say that.

L. C. J. When we are examining concerning mens lives, we must be careful of their words in such matters.

Otes. One part of my evidence I have omitted, Your Lordship did ask me how I came to know my Lord Castlemaine's hand. Sometimes we received letters from him subscribed Palmer, and sometimes subscribed Castlemaine, sometimes some other name which I may not remember; and they were generally received as from him. And I have seen my Lord Castlemaine write, for that night, as near as I remember, it was post-night.

L. C. J. At Fenwick's chamber?

Otes. At Fenwick's chamber, and my Lord Castlemaine did write a letter, subscribed it, and sealed it, and I was fain to go to the general post-house, it was so late.

Just. Jones. What did he subscribe then?

Otes. No, I saw no more than the superscription.

L. C. J. Then you did not see his name to it?

Otes. No. My Lord Castlemaine did ask, Why he had not answers to such and such letters? For several letters I had seen which were not of much moment.

L. J. C. I wish you had one that was of moment.

Otes. It cannot be expected that I should have them.

L. C. J. My Lord, ask him what you please.

Prif. You say, Mr. Otes, you received letters from me in Spain.

Otes. I never said so.

Prif. You saw letters in Spain from me?

Otes. Yes, I have seen letters in Spain that were from you.

Prif. Look you, Mr. Otes, pray let me ask you a question, you said this, That you did not know me when you met me at the consult?

Otes. What consult?

Prif. At Fenwick's chamber.

Otes. I did not know you at Wild-house.

Prif. There you met me first?

Otes. There I met the prisoner at the bar.

L. C. J. He says he did not know you at Wild-house, but he came to know you by Langworth in Lincoln's-Inn Fields, and then you went together to Fenwick's chamber.

Prif. Mr. Otes, Did not you say, that at Wild-house you did not know me, nor I you?

L. C. J. He says, he can't tell whether you knew him or no, but he did not know you.

Prif. Was I familiar with you?

Otes. No, my Lord.

Prif. Did I talk treason at Wild-house?

Otes. It was the discourse of the day, but I do not remember every particular of the discourse, but I remember what your opinion.

opinion was concerning the Rector of Liege and the Rector of Gant.

Prif. Was there any thing about killing the King at Wild-house?

Otes. Really, I can't remember, I wont charge it there because I am upon my oath; though I morally believe, as to myself, that there was discourse bad enough there.

Prif. Mr. Otes, Pray will you hear me, then the acquaintance I had with you was by Mr. Langworth, and then we went that night to Fenwick's chamber, and there we staid very long, and there we had all this discourse?

Otes. Yes.

Prif. Look, Mr. Otes, Was there any body by besides Mr. Langworth and Mr. Fenwick?

Otes. Really, I don't remember any body was by, unless a maid might come to fill a cup of drink or so.

Prif. Mr. Otes, Pray Mr. Otes, did you and I ever meet together after that time?

Otes. Really, I can't be exact in that.

Prif. Did you never see me nor discourse with me after that time?

Otes. I cannot recollect myself as to that, I cannot remember.

L. C. J. He does not remember that ever he was with you afterwards.

Prif. You don't know whether ever I discoursed with you afterwards?

Otes. I don't remember.

Prif. Very well, Mr. Otes, look you, Sir, you don't remember that I ever had any discourse with you after that time; and no body was by but Mr. Fenwick and Mr. Langworth?

Otes. As I remember.

Prif. Was not there another Priest there?

Otes. There is no body occurs to my memory.

Prif. Mr. Otes, you brought me letters from Spain?

Otes. I brought a letter from Spain directed to you in 77.

Prif. Was I in town or out of town?

Otes. I delivered it to the Provincial.

Prif. You went over to Liege; did not you see me there?

Otes. No, I did not see you there, I only went to wait upon a gentleman that was a Priest afterwards, that went to take orders.

Prif. Did you not see me at Liege?

Otes. No, my Lord.

Prif. You were at Liege, did you stay there?

Otes. I lay there one night.

Att. Gen. Have you any thing to ask.

Prif. Presently.

Just. Jones. It is very reasonable my Lord should question you. You own him to be the Lord Castlemaine; When was it you did first discover this business concerning my Lord Castlemaine?

Otes. My Lord, I did discover my Lord Castlemaine to be in the plot, the last sessions of the Long Parliament, and I accused my Lord Castlemaine this Trinity-term was twelve-months, and my Lord Castlemaine was committed: For when Mr. Dangerfield came in and accused my Lord Castlemaine, I brought a charge a second time against my Lord Castlemaine.

Just. Jones. Did you discover all this then?

Otes. I did charge him for having an hand in the design in general.

Just. Jones. To the Parliament?

Otes. Yes, to the Parliament.

Prif. You say when I assented to the King's death in Fenwick's chamber, that I said I should now find a time to be revenged?

Otes. Pray, my Lord, don't put me to mention such reflecting evidence.

Prif. When you were before the King, you did in pursuance of this speak of a divorce.

Otes. My Lord, I will give evidence as to that if that my Lord comes to be indicted for his Priest-hood.

L. C. J.

L. C. J. My Lord may ask what questions he shall think fit.

Att. Gen. My Lord says he has said it, and what he said in another place he is not to treat now of.

Pris. Suppose I can prove him an ill man in any place, is not that fit to be spoken of here? Since he hath brought the King upon the stage, and since he hath accused me before the King and your Lordships of a divorce, I ask him whether he saw it?

Otes. I will tell your Lordships what I said as to the divorce, I heard it discoursed of generally among the fathers beyond sea, and this was some other part of the discourse at Wild-house; and I heard my Lord Castlemaine say that he had been at great charge to carry on that business of the divorce.

Pris. At Wild-house.

Otes. At Wild-house. Now, my Lord, I took no notice of it, because it was not my business. But, my Lord, after that there was a Priest's chamber that was searched, and there was the whole case stated; now what is become of the state of that case, my Lord, I cannot tell.

L. C. J. By whom was that case stated?

Otes. There was a letter found, whereby my Lord Castlemaine should have the matter directed, in order to the carrying on the divorce that was to be between him and his wife Barbara.

Pris. Did not you tell the King that you saw the divorce in Strange's hand?

Otes. My Lord, I will tell you this, I gave an account to the King, that I saw in Strange's hand, an account of a divorce that was between my Lord Castlemaine and Barbara Duchess of Cleaveland.

Recorder. My Lord, if he ask too many questions that don't relate to this matter, it is impossible to give an account of every particular.

Pris. My Lords, I humbly submit this case.

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Rec. Ask him what you said to such a man upon the ninth of August was twelve-month, must he give an account?

L. C. J. He must say he does not know.

Rec. Indeed it is reasonable that my Lord Castlemaine should ask him some questions, and that Mr. Otes should give him an account.

Att. Gen. My Lord, will you give me leave to speak? If he may ask questions about such foreign matters as this, no man can justify himself.

L. C. J. This is not so mighty remote but use may be made of it.

Att. Gen. If he should ask whether he were such a day at such an house, and tell him yes, and mistake the day; any man may be caught thus.

Pris. How can a man be caught in the truth?

Att. Gen. My Lord Castlemaine may, if he can, catch him in any thing he gives in evidence here.

Pris. My Lord, if your Lordship overrule me, I will say no more. Mr. Attorney says I come to catch him, I confess I do.

Att. Gen. You should not ask him foreign questions.

L. C. J. He asks a plain question, why do you labour so much that he should not ask, whether he had seen the divorce? My Lord Castlemaine, I have asked the question for you, Whether or no he said he had seen the divorce? And he does not remember whether he said so or no.

Att. Gen. My Lord, I think, with your Lordship's leave, that he is not bound to answer questions, that are not to the evidence.

L. C. J. If so be he would come to make application, it may be well enough.

Att. Gen. I say it for the method of the evidence, my Lord, that I would not have these excursions.

Pris.

Prif. I defire your Lordship that I may say out what I have to say. I say this, That no man in the world that speaks truth can be caught, neither will Mr. Attorney suffer me to catch him.

Att. Gen. I say you have liberty to catch him in any thing that doth belong to the evidence.

Prif. I come to shew you the fitness of it to this affair. He comes and tells you, among other consults, of Wild-house; and my meeting him in Lincolns Inn Fields, the recommendations of Mr. Langworth, and going to Fenwick's chamber, where we talked of altering the government, and my assenting to kill the King: And since you have brought the King upon the stage, I will refresh your memory a little; since you talk of revenging myself, look you, if you did not mention a divorce to the King, and also to my Lord Chief Justice.

Att. Gen. My Lord, you are under a mistake.

Prif. Pray, give me leave, Mr. Attorney.

Att. Gen. You make such excursions into foreign matters.

Prif. Mr. Otes, you did say you saw a divorce. I ask you whether you saw a divorce, and where, or whether you said so?

L. C. J. He says, he does not remember he said so.

Otes. I do not remember whether I said so or no, my Lord, I have it down, but indeed I did not set my thoughts a-work.

Att. Gen. He hath given you an answer that may satisfy you.

Just. Raymond. He hath papers wherein he hath entered memorandums to refresh his memory, but these papers he hath not by him.

L. C. J. Then he may say he hath not.

Att. Gen. That he hath already, my Lord.

L. C. J. Have you any more to say?

Prif. I have, my Lord, if you will give me leave to write down two words.

Prif. Mr. Otes, you told my Lords the Judges that I did say, I was at great expence about a divorce?

Otes. Yes.

Prif. That is very well, Mr. Otes.

Att. Gen. Call Mr. Dangerfield.

Dr. Otes was going out of the Court.

Prif. May Mr. Otes go out of the court?

Court. Yes, yes.

Otes. I will be within call, my Lord.

Prif. I only submit it to your Lordships, whether or no a witness may go out of the court?

Otes. I will stay then.

Att. Gen. Swear Mr. Dangerfield.

Prif. Pray stay.

L. C. J. Why so?

Prif. Here I am a prisoner, and submit it to your Lordships, whether or no Mr. Dangerfield, who hath had the censure of this court, may be a witness? Whether or no council shall shew reasons to your Lordship, whether he may speak or no?

Just. Jones. You must shew your exceptions that you have against him.

Prif. My exception is this; that he was convicted of felony, that he broke prison, and was outlawed upon it. Besides this, he is a stigmatic, hath stood in the pillory, and was burnt in the hand. Now, I humbly beseech your Lordships, that you will be pleased to hear what my council can say; and then, if you over-rule, I shall give place with all my heart.

L. C. J. I think it reasonable, if you desire council, that they should be allowed to speak.

Att. Gen. If your Lordship please, when my Lord's exceptions appear.

Just. Jones. What are your exceptions, my Lord?

Prif. That I told you beforehand, he is

is an outlawed person, he is convicted of felony.

Just. Jones. When was he outlawed?

Att. Gen. In the 27th year of the King, and we say he hath a pardon in the 30th year of the King.

L. C. J. How do you prove he was burnt in the hand?

Att. Gen. When was he burnt in the hand?

Pris. Call Briscoe.

Att. Gen. We bring a pardon unto that, and that will restore him.

[A Record produced.]

Att. Gen. That record we confess, shew the pardon, shew the pardon.

L. C. J. Now go to that for which he was burnt in the hand.

Att. Gen. Here is a pardon that extends to them all.

[The pardon read: *Decimo tertio die Januarii, Anno Regni, &c.*

L. C. J. This does not do it.

Att. Gen. Yes, my Lord, it does.

L. C. J. Is that the Newgate pardon?

Att. Gen. Yes, my Lord.

L. C. J. We have had it in the court.

Att. Gen. Yes, my Lord.

L. C. J. And felony and outlawry is in it.

Att. Gen. Yes.

L. C. J. Where is that for which he was burnt in the hand?

Att. Gen. For that we give an answer; he was received to the benefit of his clergy, and he was burnt in the hand, and his pardon is after that too.

L. C. J. So it is.

Att. Gen. Then his pardon answers them all.

L. C. J. Now you see, my Lords, you think Dangerfield ought not to be a witness, who hath gone through so many punishments, outlawed for felony, and burnt in the hand for felony: Mr. Attorney makes answer, We have a pardon, and by that he

is restored, as he says, to be a witness again. If you desire counsel to speak to this point, whether or no a man branded and burnt in the hand for felony, and afterwards is pardoned, is capable of being a witness? I see no reason to deny it you.

Att. Gen. If there be matter for counsel to speak, in that case we must submit, if your Lordship make it a doubt.

L. C. J. I do for my own part; in this I am clear: If a man were convicted of perjury, that no pardon will make him a witness, because it is to do the subject wrong. A pardon does not make a man an honest man; it takes off reproaches; and the law is wise in that, the law will not suffer endless contumelies to be heaped upon men, nor to be called perjured rascals, and such things; it is only to prevent upbraiding language, which tends to the breach of the peace. But in my opinion, if a man stands convicted in court for perjury, no pardon can ever make him a witness, and set him upright again. But that is a different case from this; we are upon this single case, Whether a man that is burnt in the hand for felony, whether a pardon can set him right or no? For this I make more doubtful than the other; for a man, may be, that hath committed a robbery, would be afraid to forswear himself; for though one is a great, the other is a greater sin, and that in the subject matter; which considered, I think it reasonable to allow my Lord Counsel to speak to that single point, That a person being burnt in the hand for felony, and afterwards pardoned, Whether he is capable of being a witness?

Pris. Then I do name Mr. Jones, Mr. Saunders, and Mr. Darnal.

L. C. J. Very well.

Mr. Saunders was called, but was not in court.

L. C. J. Are you prepared, Mr. Jones, to speak?

Mr.

Mr. Jones. No, my Lord.

Just. Jones. My Lord, do you except against that one particular?

Pris. I stand upon both, his being pilloried, and burnt in the hand.

L. C. J. Will you admit that he stood in the pillory.

Att. Gen. I know nothing of it.

L. C. J. I will tell you, my Lord, you will see whether it be necessary to protract this or no; for your Counsel will hardly undertake to argue unprepared about this point, and if the tryal should be adjourned, it would be very troublesome. I think it the duty of my place to discharge my conscience for you and against you, as the matter shall fall out; and if so be that you should insist upon it, and he be capable of being a witness, supposing it so; yet I must say, you may give in the evidence of every record of the conviction of any sort of crimes he hath been guilty of, and they shall be read. They say last day there were sixteen; if there were an hundred they should be read against him, and they shall all go to invalidate any credit that is to be given to any thing he shall swear.

Pris. My Lord, I humbly submit myself to your Lordship; sixteen we have, I bring but six, you shall have them Mr. Attorney when you please.

L. C. J. My Lord, if you think it worth your while to put it to Counsel to argue, whether he may be a witness; or whether you think it may be as well for you, supposing he be a witness, the producing those things against him, or the records of those crimes that he hath been convicted of; whether that will be as well for you or no, I leave it to yourself to do as you think best.

Darnal. I conceive, with submission to your Lordship, that he cannot be a witness.

L. C. J. Are you prepared to speak to it now?

Darnal. My Lord, I am ready to offer somewhat to your Lordship, why I conceive he ought not to be sworn: But I desire first, that the pardon may be read, because many persons and offences are comprized in it.

L. C. J. It is a pardon for felonies and outlawries of felony in general.

Darnal. If the persons and their offences are severally and sufficiently pardoned, then, my Lord, I will proceed unto the other point.

Just. Jones. The whole is good.

Darnal. Then, my Lord, I conceive, notwithstanding this pardon, Mr. Dangerfield ought not to be sworn; and that no person attainted of felony (though pardoned) can be a witness. My Lord, it hath been adjudged in 1 Hen. 4th, *quadragesimo primo*, That a man attainted of felony, (as Mr. Dangerfield is) though he be afterwards pardoned, cannot be sworn of a jury. My Lord, the same question hath been resolved since, in *nemo Jacobi*. It is reported in Mr. Brownlow's and Goldborough's Reports, *Folio Tricesimo quarto*. And my Lord Cook in Mr. Bullstrode's second Reports, 154. in Brown and Crasshaw's case, is of the same opinion. He says, a man attainted and pardoned cannot serve upon any inquest; and that by the same reason, the testimony of such a man for a witness is in all cases to be rejected.

L. C. J. Who says so?

Darnal. My Lord Cook.

L. C. J. Men do not slight my Lord Cook, where do you say that is?

Darnal. It is in Mr. Bullstrode's 2d reports, in Brown and Crasshaw's case, fol. 154.

Just. Jones. But you should have brought these books hither.

Darnal. I suppose, Sir, they may be had in the hall. My Lord Cook gives this reason for it in that case; he saith, that notwithstanding his pardon he is not *probus & legalis homo*.

Just.

Just. Jones. That pardon was before any judgment; it was a pardon of felony before any trial or judgment; but here is a conviction.

Darnal. My Lord Cook puts the case there of a man attainted. And, my Lord, in *duodecimo Jacobi*, it is reported in Brownlow's Reports, fol. 47.

Just. Raymond. Which of his Reports?

Darnal. I know but of one set out in his name alone, the other (which is called the First Part) is set out in his and Goldsborough's name. I have Mr. Brownlow's Reports here, and if your Lordship please you may see it.

L. C. J. What is the page?

Darnal. Forty-seven, my Lord; the case there reported is, The King pardoned a man attaint for giving a false verdict; yet he shall not be at another time impannelled upon any jury; and the reason given there is, that though the punishment was pardoned, yet the guilt remained.

Just. Jones. That is a very short note, and not so much in the book as you have mentioned.

Darnal. I writ it word for word out of the book, Sir, and I am sure there is so much in my book. My Lord, in Mr. Just. Crooke's Elizabeth, fol. 686. in Shelborn's Case, it is held, That though the King may pardon simony, yet he cannot enable a simoniack to retain a living.

L. C. J. The act doth make him not capable.

Darnal. I conceive, Sir, it is upon the same reason, because the pardon cannot take away the guilt, though it may the punishment of the offence.

Just. Raymond. He can't dispense with simony, he can't give a dispensation to take a living.

Darnal. My Lord, upon these resolutions and the reason of them, I humbly submit it to your Lordship, Whether Mr. Dangerfield (having been attainted of fe-

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lony, though he be since pardoned) can be a witness.

Att. Gen. My Lord, with your Lordship's favour, this is quite contrary to the constant and general opinion, and contrary to the constant practice: For, my Lord, with your Lordship's favour, when a man is pardoned for any crime, if a man can't say he is a felon, or he is perjured, then he can't be reckoned so to any intent or purpose whatsoever.

L. C. J. I told you before it is consonant to all the reason and law in the world, that a pardon should stop mens mouths from reviling speeches that signify nothing; but it is one thing to say men shall not go reviling, that can have no consequent good, but which tends to the breach of the peace, and another thing to say he shall be *Liber*.

Att. Gen. My Lord, when the King gives him a pardon, it is as if he had never committed the offence.

L. C. J. He may be outlawed notwithstanding the King's pardon, and then it is not as if he had never committed the offence.

Just. Jones. It restores him to wage battle, and it makes him *liber & legalis homo*: For if a man may wage battle, he is *liber & legalis homo*.

Att. Gen. Then, my Lord, if he be so, he shall be a witness: For, in the point of perjury, a man that after a conviction of perjury had a pardon, hath been admitted several times.

L. C. J. Was the exception taken, Mr. Attorney?

Att. Gen. Yes, and he rejected before he had a pardon.

Just. Raymond. How many men have been witnesses that have been convicted of felonies, after the Kings have pardoned them?

Recorder. I will not adventure to say that there hath been a particular objection made,

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and

and so that the court hath had the debate of it; but I will undertake to give your Lordship several instances of men that have been convicted, and the Judges sitting there knew them to be so convicted, and did not take notice of it.

Just. *Raymond*. I speak of Witherington particularly.

Recorder. He was a witness, though every man did know that Witherington was convicted. I beg your Lordships leaves to speak it, that the Judges themselves did know that he was convicted and had received sentence of death.

Sol. Gen. [Sir Francis Winnington.] The constant practices of the Judges is a mighty conclusion.

L. C. J. What think you, Mr. Attorney, if a man be convicted of felony, and afterwards hath a general pardon, is he a witness?

Att. Gen. Yes truly, my Lord, it signifies the same thing, my Lord, as to be a freeman again.

Just. *Jones*. He cannot be of a jury if he be attainted of felony; and the reason is, because he is not *probus & legalis homo*; and why he should not as well be of a jury as a witness I cannot understand.

Att. Gen. There is a great deal of difference, my Lord, a great many men may be admitted to be witnesses, that cannot be admitted to be jurymen.

Just. *Jones*. Shew me any man that is excluded from a jury and admitted to be a witness, except in the case of kindred.

Att. Gen. An hundred.

L. C. J. Shew me any man who being of a jury was excluded, and yet made a witness.

Att. Gen. A villain was not admitted to be a jurymen, but a villain was always to be a witness, and that was a point of infamy.

L. C. J. What infamy was contained in being a villain?

Att. Gen. He was a criminal, he was not *liber homo*.

L. C. J. But though he be not a freeman, he may be an honest man.

Recorder. My Lord Hobart says, a pardon takes away the guilt.

L. C. J. It takes away guilt so far as he shall never be questioned; but it does not set a man as if he had never offended. It cannot in reason be said, a man guilty of perjury is as innocent as if he had never been perjured.

Att. Gen. I say, if a man be pardoned, he is as if he were not guilty.

L. C. J. If I were in my Lord Castle-maine's case, I would submit it; but when he hath given his testimony, my Lord shall have liberty to give in the records against him of what crimes he hath committed.

Just. *Jones*. I do confess indeed, that my Lord Hales, in his little book "Of the Pleas of the Crown," saith, That a man that hath had the benefit of his clergy, is restored to his credit.

Just. *Raymond*. If that case be allowed, it is a plain case; for there is no man can wage battle, but he that is *liber & legalis homo*.

Recorder. A man broke prison, and therefore he could not wage battle; he replies, the King hath pardoned me that felony, and thereupon he is admitted to wage battle.

Just. *Jones*. Where there is no judgment given in the case, and the King doth pardon a man, that doth make a very great difference.

Recorder. In the case of Witherington, my Lord Chief Justice did look upon the Records, and afterwards said he was a good witness, and was admitted.

Pris. If you have law by you, I must consent.

L. C. J. Then you must consent.

Recorder. There are several persons who have had pardons after robberies, and we are forced to make use of some of these fellows.

L. C. J. Before conviction.

Recorder.

Recorder. No; after conviction, my Lord, I have known a prisoner at the bar, when my Lords the Judges have been there, to be a witness; and if the court had made any doubt, it would have been a question before this time of day.

Att. Gen. My Lord, if you please, Mr. Dangerfield may be sworn.

L. C. J. My Lord shall have the benefit of excepting against his credibility.

Then Mr. Justice Raymond went down to the Court of Common Pleas, to know their opinion.

Just. Jones. Have you any other witness in the mean time?

Att. Gen. No, my Lord, he is a principal witness.

Sol. Gen. Besides the common practice, here is a book that says he shall wage battle.

Just. Jones. That is; when there is a pardon before conviction.

Sol. Gen. But here, my Lord, he says the *Reatum* is taken away, and then it takes away his disabilities too. The difference can be nothing here before conviction, and after, because before conviction there is a disability, before conviction he is disabled from waging battle: So that that makes no difference before conviction, and other cases after conviction, and the disability is taken away by the pardon, and he is restored to be a freeman.

L. C. J. There is a disability upon presumption, though not upon conviction.

Sol. Gen. There is the same legal impediment in the one as in the other; but his credit is left to the breast of the jury.

Recorder. When a pardon comes, it takes away not only *Penam*, but *Reatum*; and the reason my Lord Hobart gives.

L. C. J. Nay, give your reason.

Recorder. For felony is *contra coronam & dignitatem*, is a fault against the King; and when the King pardons it, it ceases. And in another place it is said, It pardons all disabilities incident to him.

Just. Jones. That is before conviction still.

L. C. J. Don't my Lord Cook tell you expressly, That the taking a pardon doth not prove any offence? You take a pardon, it ought not to be concluded that you are guilty; but the proper conclusion of a wise man is, That you would be safe. It can't be thought that every man that hath a pardon in England is guilty of all those offences that are there pardoned.

Just. Jones. There is a difference between a general pardon and a particular pardon: When a man doth accept of a special pardon, it must be intended that he hath some consciousness of guilt, or else he would not take it; but he that is included in a general pardon may be clear, because all men are included in it, unless some persons particularly excepted; and the difference is taken in that very point, from accepting a general and a special pardon.

L. C. J. That the acceptance of a general pardon, doth not barely of itself intend men to be guilty of the crimes, is plain, and the reason is most apparent; for besides that men be safe; so there be times that give a reason why men should have a pardon, because no man knows when he is safe; Perjury so abounds that no man can say he is safe, and that is a reason, why men should be very willing to accept of pardons.

Cl. of Cr. Here's my Lord Hales's book about the pleas of the crown.

Recorder. He says, When the King hath discharged and pardoned him, he hath cleared the person of the crime and infamy.

Just. Jones. It is so no doubt.

Sol. Gen. May we pass upon these authorities?

Just. Jones. Sir Francis, we are not willing to go about it till it be concluded; for that purpose we have desired my brother Raymond.

Raymond to know the Judges opinions of the Common Pleas.

Recorder. He doth expressly say, it hath restored him to his credit; and in Witherington's case he did call for the very Records.

Att. Gen. If it restore him to his credit, I hope it shall not blemish him so much when he is sworn, that he shall not be believed.

L. C. J. We won't have any proposition in that case, his crimes shall be all taken notice of; it is fit to have men guilty of all sorts of villainies, and not to observe it?

Just. Jones. In that very case, my Lord, Hobart says, A man may say of a pardoned man, he was a felon, though he cannot say now he is a felon; and now what can be objected to this case?

Recorder. Things may be objected against a person, and his credit left to the jury; but the question now is, Whether he shall be a witness or no?

L. C. J. We have men grown so insolent, they behave themselves with that vile insolence, that now they take upon them to speak against whole societies of men; as if so be there were any thing in them that should render them better than their former lives or natures. Humility becomes penitents, and no wicked man is supposed to be a penitent that hath not that; but these carry it with that insolency, as if they were not concerned themselves, when God knows the best of them discover what they do, by being but parties themselves.

Mr. Justice Raymond returned from the Court of Common Pleas.

L. C. J. I will tell you what my brethrens opinions are; he hath put it to them on both accounts, That he was convicted of felony and burnt in the hand for it, that he was outlawed for felony, and hath a general pardon. They say they are of opinion, That a general pardon would not restore

him to be a witness after an outlawry for felony, because of the interest that the King's subjects have in him. But they say further, That where a man comes to be burnt in the hand, there they look upon that as a kind of a more general discharge than the pardon alone would amount to, if he had not been burnt in the hand. They say, If he had been convicted of felony and not burnt in the hand, the pardon would not have set him upright; but being convicted and burnt in the hand, they suppose he is a witness.

Sir. Gen. Swear Mr. Dangerfield.

L. C. J. The very attainder is taken away, and so all is gone.

Att. Gen. Come, Mr. Dangerfield, are you sworn?

Dangerfield. Yes, Sir.

Att. Gen. Pray tell what you know of my L. Castlemaine.

L. C. J. I perceive my brethrens opinion is, That if a man were convicted of perjury, if there be no burning in the hand in the case, that a pardon could not set him upright, because of the interest of the people in the King.

Att. Gen. Come, Mr. Dangerfield, are you sworn?

Dangerfield. Yes, Sir.

Att. Gen. Then pray say what you do know of my L. Castlemaine?

Dangerfield. About this time twelvemonth, my Lady Powis sent me with a letter for the prisoner at the bar, my L. Castlemaine.

L. C. J. Don't you know him?

Dangerfield. Yes, my Lord, this is the person. And, my Lord, the contents of that letter I know not: But his Lordship made me stay till he wrote an answer, and the contents of the answer, my Lord, were to this effect: For I returned with the answer to the Lady Powis, and she opened and read it while I was present.

L. C. J. Aloud?

Dangerfield.

Dangerfield. Aloud, my Lord.

L. C. J. To you?

Dangerfield. To me.

L. C. J. Who was there?

Dangerfield. Mrs. Cellier was there besides. And the contents of this letter were, "This person I like well, and though he be no scholar, he will serve to instruct the youths as he shall be directed." By the youths were meant the St. Omer's witnesses.

L. C. J. How do you know?

Dangerfield. Because I know my Lord was employed for that purpose. I know his Lordship did use to instruct the youths, and it was a common saying among them, when one of them was out of his part, they used to say I must go to my Lord Castlemaine.

L. J. C. What part?

Dangerfield. That which they were to say, and one of them did say, I am out of my lesson, I must go to my Lord Castlemaine.

L. C. J. When did he say so?

Dangerfield. Before the trial, my Lord, and my Lord Castlemaine went along with them to the trial, and his Lordship complained of some ill usage that the witnesses received there. His Lordship was one of the persons that employed me to get Lane out of the Gate-house, and his Lordship sent me to a solicitor of his, whose name was Mr. Lawson (the person is now in court), to take an account how far he had proceeded in this affair. I did take an account, and I proceeded in it afterwards and got him discharged.

L. C. J. How came you into my Lord's acquaintance.

Dangerfield. That was the first time, when my Lady Powis sent me with that letter. A pretty while after this, in the month of July, I went to wait upon his Lordship at his house in Charing-cross, the same place where I found his Lordship before; and I was to take his advice about

some letters that came from one Nevil, alias Paine. Those letters and list of names I shewed his Lordship, and he gave his approbation of them, and desired good store of copies might be writ: For it was of consequence, and ought not to be neglected. And asked me, Are there working persons employed in that business? And said he, Encourage them, and I will pay my part. So my Lord, after there were a great number of copies writ of these letters, I wrote a letter to my Lord Castlemaine, to let his Lordship know that the people had finished their work, and that there was something more to be done as a gratuity; and then his Lordship in answer to this messenger (who is here also in court) with a letter his Lordship sent forty shillings for his part. And Mrs. Cellier told me she received forty shillings and disposed of it to the use intended; now, my Lord, the contents of these letters were to the same effect with those letters and loose papers which I conveyed into Colonel Mansel's chamber; and these all tended to the promoting the sham-plot, my Lord.

L. C. J. Pray tell me what was the subject of these letters; what was the substance of them?

Dangerfield. To the promoting the sham-plot.

L. C. J. That is a general no body knows what to make of.

Dangerfield. I will give your Lordship an account in particular; the contents of many of them were to this purpose.

L. C. J. Were they not all alike?

Dangerfield. The copies were the same, and there were so many originals to draw copies from.

L. C. J. Were not the originals all to the same purpose?

Dangerfield. Agreeable in point of sense.

L. C. J. Pray tell us the purpose of them.

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Dangerfield.

Dangerfield. The purpose was, That so many letters should be conveyed into the houses of several persons of quality in this kingdom, that were called Presbyterians: For that was the notion, that all persons, that were not for the immediate promoting of the Catholic interest, lay under; because they looked upon that notion to be most obnoxious.

L. C. J. Who, and where?

Dangerfield. In general, my Lord.

L. C. J. In general, where?

Dangerfield. By my Lady Powis and the Lords in the Tower.

L. C. J. Were you by when the Lords in the Tower did agree to it?

Dangerfield. When my Lords Petre and Arundel did.

J. C. J. What did they agree to?

Dangerfield. My Lord, the thing is this, after they received an account from one Mr. Paine, I brought a billet from that Paine, wherein was contained a ground or scheme of the Presbyterian plot; so from thence it derived its first name: So that when I came to discourse with the Lords in the tower about it, they called it the Presbyterian plot; and Mrs. Cellier and my Lady Powis said, This is a notion that will do the business, as it is most obnoxious, and as best to our purpose.

Just. Jonas. How far was my Lord Castlemaine concerned in this?

Dangerfield. I have not heard his Lordship speak of it under that notion.

L. C. J. Pray let us hear what you can say against my Lord Castlemaine.

Dangerfield. Some considerable time after I had got Lane out of prison, I was employed by several other persons, his Lordship was one, and he sent me to his Lordship's solicitor, that is now in court. A pretty while after this, and the letters and list of names, containing matter to the same effect as I told you before, as those in Mansel's chamber, and all tending to the credit of the sham-plot, or the Presbyterian-plot.

A pretty while after this, in August, as near as I can remember; about the middle of August, I went to wait upon his Lordship, the very next day after I had been treated withal in the tower to kill the King, whom God preserve; and his Lordship had a servant then in the room, and he sent his servant down stairs, and looked upon me with a very austere countenance: Said he, why do you offer to refuse the business for which you were taken out of prison?

L. C. J. To you?

Dangerfield. To me.

L. C. J. Who was by?

Dangerfield. Nobody but his Lordship and myself; for he sent his servant out before; so he asked me, Why I would offer to refuse the business - I was taken out of prison for! I asked his Lordship, what that was? Said he, was not you at the tower yesterday? Yes, my Lord, I was. Would you have me kill the King, I suppose that's the business? Yes, that is, said he. Upon which he fell into such a fury, that I was forced rudely to leave the room, and went down stairs. I think at the same time his Lordship was writing the compendium of the late plot; for there I saw some words in a paragraph that lay upon the table, which I afterwards saw in that book. There was ink set upon the table, and open in his hand. And he did use in his discourse to call his Majesty tyrant.

L. C. J. Have you heard him? in what company?

Dangerfield. In his familiar discourse. As to ask when his Majesty will return from Windsor? Says he, when the Tyrant pleases. And I remember I heard him mention the word Tyrant to Mrs. Cellier at Powis-house.

Att. Gen. How came that discourse about killing the King? What was the occasion of that discourse?

L. C. J. Had you refused it to my Lord?

Dangerfield. Yes, I refused.

L. C. J. What did you say to him?

Dangerfield.

Dangerfield. I said any body, but my King.

L. C. J. He said, Why did you refuse to do that for which you were taken out of prison? What is that, my Lord? Was not you at the tower yesterday? why won't you do it? What is it? is it to kill the King? I suppose it is, saith he, that your Lordship intends. Yes saith he, that is it, why won't you do it? that is what he says.

Att. Gen. That is the evidence we give.

Just. Jones. You say he was very violent?

L. C. J. Was you ever in his company afterwards?

Dangerfield. No, not after that, that I know of.

L. C. J. What kind of fury did he shew to you at that time?

Dangerfield. My Lord, he was in a great rage, as his Lordship is very choleric; he was bustling about, and I knew not what he intended to do, and I was unwilling to stand the test of his anger. He seemed by his look to be meditating revenge.

L. C. J. How?

Dangerfield. I say this, After his Lordship had sent his servant out of the room, said he, Why would you refuse the business for which you were taken out of prison? Said he, were not you at the tower yesterday? Said I, yes, I was; would you have me kill the King? is that the business? Yes, that it is, said he, very angrily.

Pris. When did you go to the tower? Was this the next day after it?

Dangerfield. The next day after it.

Pris. Mr. Dangerfield, Pray let me ask you one question. Did not I threaten to kill you, or have some of my servants kill you, if you came unto me again?

Dangerfield. One time his Lordship saw me at my Lady Powis's house, and he shewed me a very particular favour. I speak it in the presence of Almighty God, nothing out of revenge, nor for any sort of interest.

Pris. Was I never angry with you but at that time?

Dangerfield. No, I know not of any other time that your Lordship was angry.

L. C. J. Now what say you, my Lord?

Pris. The first thing I desire to do, is, Here are two gentlemen give in evidence against me, the one is Mr. Otes, the other Mr. Dangerfield. Mr. Otes says, That he in Spain did see several letters from me: That when he came over into England, he brought a letter from Spain to me, that that letter was given to the provincial, and the provincial (he supposes) gave it me. Now, my Lord, I only desire this, that the first thing that shall be done, is, that you will please to call Mr. Parker, who will shew you what kind of man Mr. Otes is. And I am glad, since you say that Mr. Dangerfield is a good witness, that I can prove that every word he says is a lie. And so begin with Mr. Otes.

Pris. I would offer you a record, a record of some particular actions from Hastings.

L. C. J. Read the record.

The record read.

L. C. J. What use can you make of this?

Pris. My Lord, the case is only this, My Lord, I will tell you, here is Mr. Otes, this is only to shew what kind of man this Mr. Otes is. Mr. Otes he comes and accuses a man at Hastings for Buggery, there he is indicted and comes to his trial, and then he is found innocent: Now, I sent for this Parker, to tell your Lordship what kind of man this Mr. Otes was, and for that purpose shew the whole proceeding.

L. C. J. My Lord, you shall have all the justice in the world; but we must have right done to the King's evidence. You have brought in a thing, whereby all you can make against Mr. Otes is, That he was the prosecutor of a man for the crime of buggery, and is supposed to have taken his

his oath there, and notwithstanding the jury would not believe him, and found the man not guilty.

Pris. My Lord, I come to shew the motives how the jury came to clear him, that is, by proving this man was in another place at that time, and satisfied the court and jury, that he was from eleven o'clock or sooner, till eight or ten o'clock with them in company; where it was only the malice that was between Otes and Parker; and several witnesses that were in the place where he said the buggery was committed, said that he was not there; and the witnesses positively said they were with him, and all looked upon Mr. Otes as a detestable man, and sent him out of the court.

L. C. J. Do you prove this by any but Parker?

Just, *Raymond*. This ought not to be admitted; for if it be, Mr. Otes stands here to answer all the faults that ever he committed.

L. C. J. Here is the case; supposing it be true now, that Mr. Otes prosecuted a man for felony, and he gave testimony, supposing it should be so, and yet the jury acquitted him; what use can you make of it? you can make no inference; it is a thing we must allow all the juries in England; for there is witness generally given on both sides; and when there are for the plaintiff, the defendant's evidence are all perjured, and when for the defendant, the plaintiff's evidence are perjured.

Pris. My Lord, this is the inference. Thus much I make of it, that this Parker is innocent. Otes swears positively he did so, the other swears positively this man was not there; to shew the malice Otes had against him.

L. C. J. My Lord, you can go no further than you have gone. The result of all is, that the jury found him not guilty; for what grounds no man can come to say, but the jurymen themselves. No man can tell

what prevailed with the jury to find him not guilty, that is in their own consciences, and these are things that cannot be examined. His jury, notwithstanding Mr. Otes was the only prosecutor, they found him not guilty, and it amounts to nothing.

Pris. My Lord, there is another thing: While this man was in prison, what does Otes do, but comes here to London, accuses the father, who was a considerable man in the town, a justice of the peace, and mayor the year before; accuses him because he should not assist his son; accuses him before the King of speaking scandalous words; then he gets him by a messenger brought up before the council; the King was present at the hearing, and there it was proved to the King, as the order of council shews, that he was an honest man, and so the council sent Otes away with the greatest contempt, and freed the other man.

L. C. J. Was this before the plot was discovered?

Pris. Yes, my Lord, in pursuance of it.

L. C. J. You said it was that he should not help his son, his son was not free.

Pris. No, he was in prison.

Recorder. My Lord may think hard if he hath not some competent liberty; but he must keep to the business. You say, that notwithstanding he hath the opinion of the court, that the jury must take notice; then the jury must take notice it signifies nothing.

Pris. Very well. Having told you this, I desire you would be pleased to take notice, after Otes was thus forced to run away from Hastings, here it seems he was converted to be a Papist, by a person whom Mr. Otes hath since converted to be a Protestant; and you shall see what an account this gentleman will give of him.

L. C. J. What is his name?

Pris. Hutchinson.

L. C. J. What will you do against him?

Pris. Several things, my Lord.

L. C. J.

L. C. J. You must not do it: If you are able to disprove Mr. Otes in any of these particulars, you may do it. If you alledge testimony against the particular matter he hath sworn, you will do very well; but pray, my Lord, keep to that.

Pris. I will, my Lord; I will submit any thing to your Lordship's commands; and therefore, my Lord, I will tell you for what reason I sent for this man, to tell you how Mr. Otes went to Spain, and how he lived in Spain.

L. C. J. If you can shew the jury any reason why they should not believe his evidence, that will be very proper.

L. C. J. What is your name?

Hutchinson. My name is Hutchinson.

Pris. Mr. Hutchinson, pray say what you have to say, and not follow Mr. Otes's method: I only ask you this question, Sir, Whether you did convert this man, that is, reconcile him to the Church of Rome?

Hutchinson. Yes, my Lord, that I did.

L. C. J. You ought not to ask him such questions, you bring him in danger of his life; you are not to ask him such questions.

Recorder. Let us see the Statute-book.

Ch. of Cr. It is High Treason.

L. C. J. You thought this had been meritorious now, and it is High Treason.

Recorder. This it is to abound in a man's own sense. We must beg your Lordship's advice in this.

L. C. J. Are you a Protestant now?

Hutchinson. Yes, my Lord.

Pris. He was a Priest, and confesses his error.

L. C. J. Did you know Otes first in Spain?

Hutchinson. No, my Lord, I knew him first here; and we were in company, and I told him, He could not be a true Priest, since he was of the Church of England.

At. Gen. He offers such things as are not evidence.

L. C. J. Pray what do you know of his employment in Spain?

Hutchinson. I received letters from him when he was in Spain. He went over to study philosophy and divinity there, and I saw his recommendations to the Rector of Liege.

L. C. J. Did you see him?

Hutchinson. Yes, my Lord, I did see him before he made this disturbance.

L. C. J. What disturbance? Do you know? What discourse had you with him?

Hutchinson. I employed him in writing for me.

L. C. J. Writing what?

Hutchinson. In writing certain things against the corruption of the church of Rome. He had 10s. I gave him, and this was before the discovery he made (as he pretends) of the plot. And he told me he would suffer no more for conscience-sake: "It is an hard thing, (said he) Mr. Berry, for a man to want bread;" upon which I gave him 10s.

L. C. J. He says, Having been formerly with Mr. Otes, he employed him to transcribe many things for him, and Mr. Otes said to him, "He was resolved no more to suffer for conscience-sake." "How, (saith he) not so?" "Oh but Mr. Berry, (saith he) it is a very sad thing to want bread." And upon that, he says, he gave him 10s. for his pains in writing.

Hutchinson. And hereupon, my Lord, in May was twelvemonth he sent for me, when I heard he had done some more mischief; and I went to him, my Lord.

L. C. J. That was after the discovery?

Hutchinson. Yes, my Lord, upon that he was very kind to me, and gave me 10s. Said he, Mr. Berry, you have been civil to me, and you shall never want any thing so long as I have it. Said I, Mr. Otes, are these things true that you swear against the Jesuits? Said he, As I hope for salvation they are. And that was the truest word he

spake these three years. Then, said I, Mr. Otes, answer me this only one thing. There are an hundred and twenty persons that saw you every day, and dined and supped with you at St. Omers, and these you have recommended to me for virtuous people, and I know them to be so. He said, They are outlawed men.

L. C. J. What did Mr. Otes say more?

Hutchinson. He was with me frequently, my Lord.

Recorder. He paid you your angel well when he gave you 20s.

Hutchinson. Mr. Otes, speak the truth: There is a God in heaven.

Otes. Shall I be allowed to satisfy the court as to this evidence? I will give the court a very good account.

L. C. J. The substance is this; That you were poor. Is it true that he gave you 10s?

Otes. My Lord, I believe I might not have much money among them.

L. C. J. And you said, "You would suffer no more for conscience sake?"

Otes. That is not so, my Lord.

L. C. J. And, "That it is an hard thing to want bread?"

Otes. My Lord, I never wanted bread.

Hutchinson. But you said so to me, Mr. Otes.

Att. Gen. Hark, Mr. Hutchinson—

Otes. To shew the invalidity of this evidence, my Lord, the Bishop of London hath turned him out of his living at Barkin.

L. C. J. What is that?

Otes. To shew that he is is not fit to be trusted.

L. C. J. Why you have never a living.

Otes. Yes I have, my Lord.

L. C. J. Where?

Otes. In Kent, my Lord.

L. C. J. How long have you had it?

Otes. I was restored to it last summer.

Recorder. He says that he had discourse with him concerning his priesthood: Whe-

ther Mr. Otes thought himself to be a good Priest; that is, as he was made by the order of the Church of England?

Att. Gen. He says, he converted Mr. Otes to be a Papist.

Otes. And I have a charge of High Treason against that man, for seducing me from my religion, my Lord; I will swear he turned me to the Church of Rome, and I desire it may be recorded.

Dr. D. I have one thing to tell your Lordship, the man is mad, he is distracted.

L. C. J. This Doctor of Divinity is a very honest man, he will tell you.

Dr. D. He was my Curate at Barkin, and my Lord of London having some information against the manner of his preaching, sent me word to Rippon he would provide me another Curate; on Saturday last, dining with him, my Lord told me he was distracted.

Recorder. His behaviour is a very concurrent testimony.

Just. Raymond. I appeal to my Lord, if I did not tell him, as he came into the court, that he was a distracted man.

L. C. J. Call another witness.

Prisf. Here's a gentleman was his school-fellow at Valladolid. I ask you, Mr. Armstrong, Whether you knew any thing of Mr. Otes there?

L. C. J. How long had he been there?

Armstrong. He was three months there before me.

L. C. J. How long was he there in all?

Armstrong. A matter of a month.

L. C. J. Was he not there four months?

Armstrong. Yes, a matter of four months in all.

L. C. J. He says, he had been there three months before he came, and a month after he came; and that then he was but a common scholar.

Otes. My Lord, I will satisfy the court when they question me.

L. C. J. In what would you satisfy us?

Otes.

Otes. About being a scholar. I was ready to commence when they came; but being they were strangers in the town, not being town-scholars, and not undertaking Philosophical dictates the fathers did pray me to shew them the way to school; and I went with them two or three times.

L. C. J. Call another, my Lord.

Prisf. Mr. Palmer and Mr. Dorrington.

L. C. J. Did you know Mr. Otes at St. Omers?

Palmer. Yes, my Lord, and he was an ordinary scholar there, and dined and supped with us.

L. C. J. You said he dined at another table.

Palmer. Yes, my Lord, he did dine at a table by himself; but it was at the same time.

Otes. Had I scholars commons? Pray, my Lord, ask them that.

Palmer. He had the same commons that we had; but they had a respect for him as he was an ancients man, and that was the reason that he had more freedom than the rest.

Prisf. My Lord, he says he came from St. Omers at the consult: Pray, Sir, who did you come along with? Did you come with Hillsley?

Otes. Hillsley came with me in the packet-boat.

Prisf. Call Mr. Hillsley and Osbourne—My Lord, this gentleman: I would bring nothing to offend your Lordship, or nothing that hath been old, if it had not some new inference from it; therefore, my Lord, this is the reason that I sent for Mr. Hillsley. Mr. Hillsley, did you come with Mr. Otes in April in the packet-boat?

Hillsley. No, my Lord.

Prisf. You left him at St. Omers?

Hillsley. Yes, my Lord.

Prisf. Now, my Lord, I have several witnesses to prove this. And pray, Mr.

Osbourne, tell my Lord what he said to you.

Osbourne. My Lord, about the latter end of April I heard Mr. Hillsley was in town; I went to see him, and one time at a coffee-house about the Turnstile we fell in discourse.

L. C. J. My Lord, you say you have two persons of quality: I will tell you, my Lord, what you shall expect; I will not be for one, and not for the other; but be equal as near as I can. If he comes only to testify what Hillsley told him, it signifies nothing.

Prisf. I do depend upon Hillsley; but this is that Hillsley told him, That there was one Otes at St. Omers.

L. C. J. That is no evidence; nor can ladies of quality prove by their own experience what Mr. Hillsley affirms, That Otes came not over with him.

Prisf. My Lord, they can tell; and one lady, a protestant, that talking with this gentleman before the plot—

L. C. J. This is only discourse what another man says; if Mr. Otes himself should have said so, then indeed it is proper: But to shew you this, it is impossible, supposing they speak truth; that is, if they do witness what they do not, That long before they heard of the name of Otes, this gentleman should tell them, one Otes was left at St. Omers; it signifies nothing.

Prisf. Does not that confirm Mr. Hillsley's testimony?

L. C. J. No, indeed.

Prisf. I only refer this to you, my Lord; Hillsley says, in April he did leave Otes, and here are four or five witnesses that Hillsley told them so.

Just. Jones. All that my Lord says, is this, That he did leave Mr. Otes at St. Omers. If it be objected, they are catholics, as they call them; says my Lord, Hillsley did tell this story before there was any plot. Why should he tell them so? It

is

is not in favour of that religion that he speaks; but the time of testifying such a thing, shews he speak true. This is all.

Pris. This is the inference; this is only to corroborate and shew you the credit of his testimony.

Just. Raymond. It may be a mistake though; and it is of no more force than what he says now.

Att. Gen. They were all mistaken in that matter.

Otes. My Lord, he did leave me at St. Omers, but I overtook him at Calais.

L. C. J. Will you swear it, Mr. Otes?

Otes. I say, upon my oath I did it.

L. C. J. It were a great matter if you had any body to prove, that this gentleman came alone; but that is still but one man's testimony.

Pris. But here is confirmation to his evidence, that he could not invent it.

Att. Gen. You had sixteen once, but the contrary was proved and believed, and so it may be again.

Pris. Call Mr. Gregson and Mr. Rigby. Mr. Gregson, were not you landlord to Mr. Otes before the plot was discovered? How long before the plot did he lie at your house?

L. C. J. What time?

Gregson. A week before Easter, 77.

Just. Raymond. When did he go away from you, Sir?

Gregson. The Sunday after Easter day.

Just. Raymond. When did you see him again?

Gregson. He came to me about All Saints.

Just. Raymond. The same year?

Gregson. Yes.

Otes. Who paid for my quarters? Pray ask him that, my Lord.

Gregson. He paid for it himself.

Otes. Did not Mr. Fenwick pay for it?

Gregson. He did after you came from St. Omers.

Otes. My Lord, when I came last from St. Omers, I went directly to his house.

Pris. Was not he in a poor condition?

Gregson. He was then indifferently poor.

Pris. My Lord, this is only to prove his condition.

Otes. My Lord, I had only what the Je-suits allowed me.

L. C. J. You had nothing but what they allowed you?

Otes. Nothing else, my Lord.

Just. Jones. They allowed you a very scanty living.

Pris. Call Mr. Littcott. Mr. Littcott, Do you know any thing about a divorce?

L. C. J. What should he know?

Pris. Pray, my Lord, don't discourage me.

Just. Raymond. But you must not ask things that are not to the purpose.

Littcott. My Lord, it was morally impossible there should be a divorce.

L. J. C. Was there any endeavour by my Lord concerning it?

Littcott. There was no such design.

L. C. J. How was that? But pray mind, you will be morally not believed else. Do you know my Lord used any endeavours, in order to obtain a divorce?

Recorder. That is all that he says, "He never knew any thing."

Pris. I only say this, my Lord, Mr. Otes comes here and says, that he heard me say, that I did spend a great deal of money. Now if I satisfy the court that I never spent a farthing towards a divorce—

L. C. J. If he had said, your Lordship laid out sums of money, then it had been an answer to that, if you could prove you had not.

Pris. You know I stand here accused for a great crime; pray give me leave.

Just. Raymond. If it were a matter of moment we would.

Pris. Pray, my Lord, hear me: Here's a man says, I spent a great deal of money about

about a divorce; I come to tell your Lordship, that this very man, before your Lordships, and also before the King, and if your Lordships have forgot it, I will shew you witnesses that he spake it before the King, and before the House of Commons, that I did actually sue out a divorce: Now I will shew, my Lord, that I neither could nor did go about it.

L. C. J. We are not to take notice of that now. If he did say a false thing before the House of Commons, we cannot take notice of it now; for we cannot go to try whether he said so, and whether that be true or false.

Pris. I humbly beg, my Lord, if this man that is upon his oath hath sworn before the King that he did actually see the divorce, and I prove that it was impossible that he should see the divorce, because it was impossible to get a divorce——

L. C. J. What then?

Just. Raymond. You must not be permitted to prove that, it is not pertinent to the question.

Pris. My Lords, with humble submission to you, he hath told me this before your Lordships, that I spent a great deal of money about a divorce.

L. C. J. My Lord, you will be satisfied, when we have acquainted you what the ordinary proceedings of a court of justice are in matters of this nature; what is, and what is not to be admitted. If you should come to prove Mr. Otes had falsely sworn a thing in another court, and five or six witnesses shall come and say it is not true; we are not to hearken to it. The reason is this, first you must have him perjured, and we are not now to try, whether that thing sworn in another place be true or false? Because that is the way to accuse whom you please; and that may make a man a liar, that cannot imagine this will be put to him: And so no man's testimony that comes

to be a witness, shall leave himself safe. And this is another case, If he swore in another place what is contradictory to what he says now; then it is proper. If you could prove that he had sworn in another place, that he never saw you, it is very proper: But now to us he says, That he doth not remember whether ever he had seen a divorce, or that you had sued out a divorce. All that he remembers, is, That you said, you had expended a great deal of money about a divorce, and this is all he testifies here.

Pris. My Lord, my evidence against Mr. Otes is this, That he waves what he said before, when I came to ask him, and says, I don't remember. Now, my Lord, if he lies in one thing he may in another.

Just. Raymond. No man can remember all the things that ever he did in his life.

Pris. I have witnesses to appeal to, to witness every thing; and I represent it here to you, that I would with all my heart have indicted him of perjury, but for Mr. Attorney General: For I employed two to attend the Clerk of the Peace for copies of the indictments against Mr. Langhorn and Mr. Ireland; they did come to the Clerk of the Peace, saith the Clerk of the Peace, I can't do it without Mr. Attorney's authority. My Lord, saith he, I would give them you with all my heart, but I must have leave from the table.

Att. Gen. No, my Lord, I told you, I would not give it you without you had an order from the King, and the Council did not think fit to give it you.

Pris. I think this is a little pertneat.

Just. Jones. How doth any thing that your Lordship excepts against in this gentleman's testimony contradict itself? All that you accuse him of, is, That Mr. Otes had said he heard you say, you had spent a great deal of money about a divorce.

Pris.

Prif. I only ſhew, if you are pleaſed to hear it, that he reported to the King that he actually ſaw the divorce.

Juſt. Jones. That agrees well enough with what he ſays now.

Prif. He ſaid ſo, in your Lordſhip's hearing.

L. C. J. I don't remember it, if I did I would ſpeak of it; I don't remember it upon my word.

Juſt. Raymond. I proteſt I don't remember a word.

Juſt. Jones. In the court, did he ſay it?

Juſt. Raymond. Here we are all three that were preſent, I proteſt I don't remember it; but as to the buſineſs of the divorce, I might look upon it as impertinent, and ſo poſſibly might not mind what he ſaid.

Prif. I only offer this to you, and if your Lordſhips command me to deſiſt, I will deſiſt.

Otes. I deſire my evidence to prove that I was in town.

Juſt. Raymond. Pray, Mr. Otes, you are an evidence, you muſt be governed by Mr. Attorney.

L. C. J. It would be very fit, Mr. Attorney, to prove that Mr. Otes did come over with Hillsley in the packet-boat.

Juſt. Raymond. Mr. Otes, I remember very well gave an account of his coming over, ſaid he, I did come over with ſuch and ſuch perſons, and among the reſt was Mr. Hillsley. This is only to prove that he was at the conſult.

Att. Gen. We can prove it.

Records produced againſt Mr. Dangerfield.

L. C. J. Here is, That he was burnt in the hand, and out-lawed for felony, pilloried for cheating, twice pilloried, and ſee whether he was whipped or no.

Sol. Gen. I know nothing of the pillory.

Juſt. Raymond. Here was a record of him burnt in the hand, and a record for getting away falſe guineas.

L. C. J. For that he was to ſtand in the pillory.

Cl. of Cr. Here is one record for another ſhilling gilt.

L. C. J. Was that in the pillory too?

Att. Gen. He was fined fifty pounds.

Cl. of Cr. Here are three in Salifbury for three ſeveral guineas, and he was adjudged to the pillory for them all.

Att. Gen. It was all at one aſſizes, my Lord.

L. C. J. My brother tried him.

Cl. of Cr. He was tried before Mr. Juſtice Jones, and to ſtand in the pillory for all three.

L. C. J. What have you elſe to ſay?

Prif. Call Mrs. Cellier and Mr. Dowdal.

L. C. J. What is your name, Sir?

Dowdal. My name is Bennet Dowdal.

L. C. J. What have you to ſay to him, my Lord?

Prif. Mr. Dowdal, the caſe is this, Mr. Dangerfield tells me I was angry with him at ſuch a time for a buſineſs at my houſe; Was I not angry with him at Powis's houſe for going to the Lords in the Tower?

Att. Gen. Then he did go about it?

Dowdal. Mrs. Cellier ſpake to me to ſpeak to Mr. Dangerfield not to be troubled at your anger.

Juſt. Raymond. When was this?

Dowdal. After the Jeſuites died.

Prif. He proves this, That Mrs. Cellier ſpake to him to pacify Mr. Dangerfield, and Dangerfield did tell him I was angry with him for going in my name to the Lords.

Juſt. Raymond. He ſays no ſuch thing, my Lord.

L. C. J. You muſt not aſk him what Mrs. Cellier ſaid.

Mrs. Cellier. This day twelve-month he and I had been employed in writing copies of ſome letters, and I ſent him to my Lord to know if he would go ſomething towards the printing them, and he went from him to the

the Lords in the Tower. In an hour and half after, my Lord came to me very angry: Mrs. Cellier, said he, I thought you would not forfeit your discretion to send such a rascal to me; if you send him to me again I will bid my servants kick him. And said I to Mr. Dangerfield, you are not to note that; for he is a very good man, and may be angry one time and pleased another; and I would have sent him another time, and said he, Pray Madam, don't send me thither, I would rather go an hundred miles of your errand.

L. C. J. Dangerfield, that discourse you had with my Lord, was it before the Jesuits died or after?

Dangerfield. What discourse?

L. C. J. When you discoursed about killing the King.

Dangerfield. No, my Lord, two months after.

L. C. J. When was the time that these words were spoken?

Dangerfield. When his Lordship was in that passion.

L. C. J. When was that?

Dangerfield. My Lord, it was about the middle of August.

L. C. J. Was you ever in his company after?

Dangerfield. No, my Lord, I saw him once at Powis's house.

L. C. J. Had he ever been angry before?

Dangerfield. No not till this time, my Lord.

L. C. J. Here Mrs. Cellier witnesses, that this day twelvemonth, my Lord was extremely angry, inasmuch, that when she would have had you go on an errand, you would not.

Dangerfield. My Lord, that time I had been with my L. Castlemaine, I went home to Mrs. Cellier's house, which I did then call my home, and said I, my L. Castlemaine is most violent angry with me,

L. C. J. When was this?

Dangerfield. This was the latter end of August.

L. C. J. But she talks of this time twelvemonth.

Dangerfield. It is no such thing, my Lord.

Cellier. I said, Pray carry this letter to my L. Castlemaine: Pray excuse me, said he, I had rather go an hundred miles than go by his door.

L. C. J. Whereas Dangerfield says, He had this discourse in August, Mrs. Cellier says in June or July, this day twelvemonth particularly she gave him a letter, and he said, Pray excuse me, I would go an hundred miles for you; but I would not go into my Lord's company again if I could help it.

Pris. My Lord, Mr. Dowdal can tell it.

L. C. J. Did he acknowledge to you my Lord's anger in the beginning of July?

Dowdal. It was within a week after the Jesuits died.

L. C. J. I don't know that.

Dowdal. It was about the twenty first of June.

L. C. J. Here are two witnesses, one says in June or the beginning of July; says Mrs. Cellier, this day twelvemonth he came and told me my Lord was extremely angry with him. And she would afterwards have had him carried a letter: But he said, Pray excuse me, I would go an hundred miles, but he would not go again to him if he could help it. And Dowdal says he told him about that time of my Lord's anger with him.

Att. Gen. Hold your tongue, Mr. Dangerfield.

Just. Raymond. What Jesuits?

Dowdal. The five Jesuits.

Pris. If you please, my Lords, I would only tell you this. My Lords, you see that these two witnesses testify, that I was angry with Mr. Dangerfield, in June, my Lords,

Lords, I only say this to you, that when I was examined at the council before the King of this particular, my Lord Chancellor asked him the particulars of it, and he did confess this thing which I now prove. Now, my Lords, I infer this, if I was so angry with him for offering to go to the Tower, when he went to the Tower in my name—

L. C. J. That they have said, that you were very angry.

Dowdal. Dangerfield told me so, that he was angry about his going to the Tower in my Lord's name unknown to him.

L. C. J. Here are two witnesses to prove, that my Lord was angry with him for going to the Tower in his name, and they both testify he was extremely high and refused to carry a letter to my Lord; and yet he says in August following he had this discourse.

Pris. I have now only one thing to say, what hath passed between Mr. Otes and Mr. Dangerfield.

L. C. J. Do it as near as you can.

Sol. Gen. We have some other evidence to answer this.

Att. Gen. If your Lordship please, we will call two or three witnesses to prove the point. First, to prove this last thing, that we have been in my Lord's company later than my Lord speaks of.

L. C. J. He says August.

Att. Gen. We will prove after that time that is the time that pinches us.

Pris. My Lady Powis is in court, will you hear her?

Lady Powis. My Lord, I never did send a letter by Mr. Dangerfield to any body in my life, nor I never read a letter in Mr. Dangerfield's presence, nor never had him so much in my company to read a letter or any tittle to him.

L. C. J. I will tell you gentlemen, what he says, Mr. Dangerfield swears he carried a letter from my Lady Powis to my Lord

Castlemaine, and there was an answer brought back, and that that answer of my Lord Castlemaine's was read before him, and (you will do well to call Mrs. Cellier in again) my Lady Powis doth deny that she ever sent a letter by him to my Lord Castlemaine, or any body else, by him in her life; or that she ever communicated any letter to him: This is apt evidence, this is the truth of it; for it answers directly to what he says against my Lord Castlemaine.

Sir Richard Barker.

L. C. J. What say you, Sir Richard Barker, can you give an account of Otes? When was Mr. Otes in town? What time that you know of?

Sir R. Barker. My Lord, I remember we were once upon this before your Lordship.

L. C. J. In 78?

Sir R. Barker. Yes, my Lord, the evidence that I gave, my Lord, was only this, that my servants told me that Mr. Otes had been at my house: It was before Whitsuntide, in May 78.

L. C. J. Did you see him then? when was it you saw him?

Sir R. Barker. My Lord, I saw him after.

L. C. J. How long after?

Sir R. Barker. It was about the latter end of June.

L. C. J. He says to his own knowledge he saw him in June.

Att. Gen. But we have his servants here too, Philip Page, and Cecily Mayo.

L. C. J. Do you hear, Mrs. Cellier, was there any letter sent by my Lord Castlemaine to my Lady Powis, that was read before you and Dangerfield?

Mrs. Cellier. No, my Lord.

L. C. J. Here are two witnesses, my Lady says there is no such thing, and Mrs. Cellier says it.

Pris.

Pris. There is another thing, that is, The teaching the scholars at St. Omer's, that I taught the scholars their lessons.

— *Turner.*

Sol. Gen. Pray inform my Lord and the jury, what time it was you saw Mr. Dangerfield at my Lord Castlemaine's.

L. C. J. What month can you charge yourself to say, you saw Dangerfield in my Lord's Castlemaine's company?

Turner. I can't say just the time.

L. C. J. Might it be August?

Turner. I can't well tell, I think it might be about July.

Just. Raymond. Why do ye think so?

L. C. J. You are not asked to accuse yourself in any thing, but when you saw them together.

Turner. I was coming down stairs, my Lord.

Just. Raymond. You don't tell when it was.

L. C. J. Tell us whether you can tell, or no: If you are doubtful, say you are doubtful; but speak the truth.

Turner. I can't be positive.

L. C. J. It might be in June, or July, or August, but you think July?

Turner. Yes, Sir.

Sol. Gen. The sooner it is after that the evidence is, the better against it.

Att. Gen. Madam, I think your ladyship says you never sent a letter by Dangerfield?

Lady Powis. Yes, Sir.

Att. Gen. Nor did you never receive any notes from him?

Lady Powis. I have received some notes from Mrs. Cellier, which were his writing.

L. C. J. But did you ever receive a letter from my Lord Castlemaine?

Lady Powis. I never did.

— *Woodman.*

Just. Raymond. What do you say, Mr. Attorney?

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Att. Gen. Heark you, Woodman, were you sent with any letter?

Woodman. To whom?

Att. Gen. To my Lord Castlemaine, or any body?

Woodman. I was sent with one letter, it was Mrs. Cellier's.

L. C. J. To whom?

Woodman. To my Lord Castlemaine; as I remember, I took it from Mrs. Cellier's daughter.

Att. Gen. Did you ever receive any money of my Lord Castlemaine?

Woodman. Yes.

L. C. J. What was it? how much was it?

Woodman. About three pounds, or thirty shillings, I believe.

L. C. J. How do you believe it?

Woodman. To the best of my thoughts it was.

Att. Gen. Was it for Dangerfield?

Woodman. My Lord, I don't know that.

L. C. J. Have you any more?

Sol. Gen. My Lord, I have this to say to prove Dr. Otes was in London in April 78.

L. C. J. He doth not deny but he might be here too.

Pris. I don't dispute it, I have only this one word more. It is not of treason, but it is against my reputation; because this man, before your Lordship, I think hath accused me of it; and I think I shall give you very good satisfaction: That is, that the boys that came from St. Omer's were not instructed and taught by me. Now if you please, to give me leave to shew it, I have done. Look, the thing that I can say, is this, Mr. Littcott.

Just. Raymond. You see he said it was morally impossible.

Pris. Pray my Lords.

Just. Raymond. I will undertake you will say it is time lost.

5 X

L. C. J.

L. C. J. I would stay some time to observe to the jury what I have taken notice of with all my heart, but I should be gone.

Pris. I have done, I would not say any thing to disgust any body.

L. C. J. Gentlemen of the jury, I will deliver my observations in this case as I would in any cause, to the best of my understanding, and I will make those observations that are as natural as I know how to do; and proper for you to take notice of. It is in vain to dispute what my Lord stands indicted of: It is for attempting to murder the King, and change our government ~~and~~ our religion. To prove this, there have been two witnesses only that are material, and that is Mr. Otes in the first place, and Mr. Otes his evidence, the sum of it is to be reduced—

L. C. J. Mr. Attorney, do you stand up to speak any thing?

Att. Gen. If you please, we will sum up the evidence for the King, not to offend your Lordship.

L. C. J. If you would be short, Mr. Attorney, we would not hinder you of any thing.

Att. Gen. I will be very short.

If it please your Lordship, and you, gentlemen of the jury, My Lord Castlemaine is here charged with High Treason. The proof that we have against him is by two witnesses, that is, Dr. Otes, and Mr. Dangerfield. Mr. Otes he doth swear this, namely, That after the consult (for I will bring it in short) that after the consult that was for killing the King and altering the government, my Lord Castlemaine being acquainted with it at Mr. Fenwick's chamber, did hope it good success, and that he should come to be revenged. Mr. Dangerfield he hath proved, that being treated with to kill the King, and having refused to do it, my Lord Castlemaine was very angry with him for it, and said, "Why won't you do that for which you were

taken out of prison?" Here are two witnesses exposed: What is said against Mr. Otes signifies nothing. As to Mr. Dangerfield there are some exceptions, which we must confess to be true; but he is a witness, and such matters are to be expected to be proved by such witnesses: For if a man will discover robberies, he must go to such persons as do such things; and if treasons, it must be among them that have been employed in such things. Though he were a dishonest man before, yet he may be honest now: He was never guilty of any treason but as he was employed amongst them. There are some witnesses brought to encounter him, and one is my Lady Powis, who, as he says, sent him with a letter to my Lord Castlemaine; but she says she did never send a letter by him; and others say, he would never come at my Lord Castlemaine after he was angry, which was in June. Now for that, gentlemen, you do hear Turner say, That in July or August, for he can't tell which, he thinks it might be July, he saw Dangerfield at my Lord Castlemaine's; so that that encounters that evidence.

L. C. J. If Mr. Attorney had not interrupted me, I would not have left out any thing of this nature, for I would be certainly careful where the King's life lies at stake: I would be sure to preserve my Sovereign above all things; and therefore no man ought to think that I should be partial in a cause wherein our religion, and the life of the King and the government is in danger. But I must say on the other side, That there should be good competent proofs of these things against those accused, because their lives and fortunes, and honours, and all are at stake. And so, gentlemen, we shall discharge our consciences to the best of our understandings, and deal uprightly on both hands.

For the case it stands thus: It is truly observed by Mr. Attorney, that there are but

but two material witnesses to the charge of this indictment, that is to say, Mr. Otes and Mr. Dangerfield. Mr. Otes his testimony is in two things, the one close, the other is more remote. That more remote is, That he had a letter to send to my Lord Castlemaine, which he gave to the provincial to send it, and as he says, he saw a letter subscribed Castlemaine, and that afterwards by seeing him write a superscription, he could recollect the character so well, that he believed that to be his hand which he saw in Spain among the Jesuits or the Fathers, as they call them there, to whom they communicated that letter; wherein he mentioned the general design, that is, the bringing in Popery, which is the bringing in the Catholic Religion, as they call it. That is more remote. He says, there were letters past between them, wherein my Lord approved of some things and disapproved of others, which related to the design; by which, says Mr. Otes, we meant the whole matter and transaction of killing the King; and that doth appear by that letter he saw of my Lord Castlemaine's, for that annexes to design the advancing the Catholic Religion. The first time he saw him he did not know who he was, and there, at Wild-house, he says, that my Lord Castlemaine should drop out some words which were suspicious, and one thing, as if he understood something of this matter that they had in agitation.

But more particularly he says, That when he came to Fenwick's chamber, there was the great matter. They talked before but of the design in general, at Wild-house; but afterwards meeting in Lincoln's-Inn Fields, where he was told who he was, they went to Fenwick's chamber, where they fell a discoursing about several things that related to the concern, and at last they fell upon the matter in hand, and said, they were glad to see the fathers so unanimous in this matter: I asked about what mat-

ter? He said, The killing of the King and bringing in Popery; to which he says, that my Lord should make answer, He wished them good success in their design, and that then he should be revenged. This is the substance of what Mr. Otes says; against whose testimony, I must tell you, there hath been but little. There is but little thrown upon Mr. Otes by way of disgrace and infamy; for that verdict that the jury found against his evidence, it is not material, for then every man must be accused when the jury does not go according to the testimony he gives. It is not to be denied, but there is something said against him in another particular, and that is his coming over from St. Omer's; where he says that Mr. Hillsley came over with him in the packet boat, but Mr. Hillsley denies it; Mr. Otes would have saved it, by saying he left him at St. Omer's: 'Tis true, says Mr. Otes, but I overtook him afterwards; but he says to the point, that he came not with him. Now it is not to be denied on the other hand, but Mr. Otes might be here, and my Lord of Castlemaine seems to admit it, and it is probable enough Mr. Otes might be here. This is all I remember in reference to Mr. Otes. You must weigh well with yourselves how probable or not probable what he does swear is. But I must tell the jury they are to weigh the natures of people among themselves, as they carry probability or not, or else the confidence of a swearer shall take away any man's life whatsoever. And to that that Mr. Otes says first, I understand not how he should be so free, Mr. Otes being a stranger to him, when he knew not my Lord, and doth not know, whether my Lord knew him or no. But he says, my Lord must needs see the Jesuits trusted him, and that might make him more confident: That afterwards going to Fenwick's house, he spoke broader, in plain English. They were talking of a design to kill the King, and

and bring in the Catholic Religion; and Mr. Otes says, he wished them good success in the design, and that then he should be revenged. How far this oath is to be taken or not, I must leave to your consideration.

The next is Mr. Dangerfield, for nothing infamous is proved against Mr. Otes. Dangerfield is a man of whom there is enough. You see what crimes there are, for it is the duty of every judge, and I can't see how he can discharge his conscience, and the duty he owes to the government, in respect of his oath and place, if he doth not make those just observations to the jury which are done in all cases: That is to say, when men have contracted great crimes upon themselves, though by law they may be witnesses; yet it hath always been observed, and their credit left to them to consider of. You see how many crimes they have produced, a matter of six great enormous crimes; and by them you will see how far you ought to consider his testimony. Had Mr. Dangerfield been guilty only of being concerned in the treason, and come in as a witness, I should have thought him a very competent witness, for that is Mr. Otes's case; but they prove crimes of another sort and nature, and whether the man of a sudden be become a saint, by being become a witness, I leave that to you to consider, and how far you are satisfied in the main.

The next thing is the opposition to his testimony. He hath sworn that he carried a letter from my Lady Powis to my Lord Castlemaine, and an answer returned back from my Lord to her, and that my Lady Powis did read it in the presence of Mrs. Cellier and him. Of this my Lady Powis hath been asked (it is true they are not upon their oaths, but that is not their fault, the law will not allow it) and my Lady Powis hath affirmed to it, as much as lay upon her to do, that she never sent a letter by

Mr. Dangerfield to my Lord Castlemaine, nor any body else. And whereas he says Mrs. Cellier was present, she says, she knows of no such letter, nor was any read in her company. And this is a contradicting his evidence, supposing him to be a man otherwise untouched. And whereas Dangerfield says, that in August he was with my Lord, and he said, How chance you would not do that thing for which you were brought out of prison? "What, would you have me kill the King?" Yes, saith he, that it is. And my Lord speaking very angrily and very roughly, made him think it time to withdraw out of his company, and never come into his company more; and that this was the time of his anger, and no other time, my Lord rather complementing him, as he would say, with friendly salutations. But they produce witness against all this. Says Mrs. Cellier, This day twelvemonth; and says t'other, about a week after the Jesuits were executed, which was about the beginning of July, saith she, I would have you carry a letter to my Lord Castlemaine; saith he, I would not do that, I would go 100 miles upon another errand, but I would not go to him. Another witness says, my Lord was mighty angry with him, and told him the cause, because he went in his name to the Lords in the tower. First, this contradicts what he said, as if there had been no anger before. The next is, that it is very improbable that my Lord should be angry with him so much, that my Lord should be very angry with him for going in his name to the tower, and afterward for his refusing to kill the King; when he said, "Why did you not do that you came out of prison for? What, my Lord, to kill the King? Yes, that." This is an argument in opposition to his testimony.

The next is a consideration for his testimony. Turner says in answer to that, in July he takes it, but can't charge himself whether

whether June, or July or August, but he himself thinks July, that he saw him at the L. Castlemaine's house. And the King's counsel would gather from that, there could not be such an unwillingness to go before that time, it being after the time they speak of that this man saw him there. Whether or no it was in June, or July, or August, is something uncertain. So that I have repeated, as near as I can, all that is substantial on either part; and I have, according to the best of my understanding, dealt fairly on both sides, and observed to you, what hath been sworn against my Lord, and what hath been said in contradiction to what they swear, and what appears upon record, as to Dangerfield.

There is a great deal of difference between Mr. Otes's testimony and Mr. Dangerfield's; for you may believe one, when you may perchance not believe another. There are not those things cast upon Mr. Otes that are upon Mr. Dangerfield. Now I must tell you, though they have produced two, if you believe but one, I think, (if so be my brethrens opinions be otherwise, I would be very willingly contradicted in this matter) if two witnesses are produced, both speaking materially to the thing, the one is believed and the other not; whether upon these two witnesses the jury can find a person guilty, or no? I am of opinion, it is but one witness, if you don't believe one; and I am sure one is not sufficient to find

one guilty: And therefore if so be you are of another opinion, let us deal fairly and above-board, that it may appear we deal rightly between the King and his subjects, and so preserve men that are accused and not guilty.

Just. Jones. I think in the first place, my Lord hath very faithfully delivered the evidence, and I do think it necessary, in a case of treason, that there must be two witnesses believed by the jury.

Just. Raymond. I never heard any man question it. If the law says, there must be two witnesses produced, it says, they must be both believed.

L. C. J. Now you have our sense of it. [The jury went from the bar, and returned.]

Cl. of Cr. Are you all agreed of your verdict?

Jury. Yes.

Cl. of Cr. Who shall speak for you?

Jury. The foreman.

Cl. of Cr. Roger Palmer, Esq; Earl of Castlemaine in the kingdom of Ireland, Hold up thy hand, look upon the jury.

Cl. of Cr. Is Roger Palmer, Esq; Earl of Castlemaine in the kingdom of Ireland, Guilty of the High Treason whereof he stands indicted, or not Guilty?

Jury. Not Guilty.

Cl. of Cr. This is your verdict, you say he is not guilty, so you say all?

Jury. Yes.

The Proceedings at the Sessions-house in the Old-bailey, on Thursday the 24th of November, 1681, before his Majesty's Commissioners of Oyer and Terminer, upon the bill of indictment for High-Treason against ANTHONY EARL of SHAFTSBURY.

The Grand-jury.

Sir S. Barnadiston	Thomas Parker
John Morden	Leonard Robinson
Thomas Papillon	Thomas Shepherd
John Dubois	John Flavell
Charles Hearle	Michael Godfrey
Edward Rudge	Joseph Richardson
Humphery Edwin	William Empson
John Morrice	Andrew Kendrick
Edmund Harrison	John Lane
Joseph Wright	John Hall.
John Cox	

The Oath.

YOU shall diligently enquire, and true presentment make, of all such matters, articles, and things, as shall be given you in charge, as of all other matters and things as shall come to your own knowledge, touching this present service; the King's counsel, your fellows, and your own you shall keep secret; you shall present no person for hatred or malice, neither shall you leave any one unpresented for fear, favour, or affection, for lucre or gain, or any hopes thereof, but in all things you shall present the truth, the whole truth, and nothing but the truth, to the best of your knowledge.

So help you God.

L. C. J. **G**entlemen of the jury, *Pemberton.* we are all met here in one of the most solemn assemblies of this nation; it is upon the execution of justice

upon such as shall be found offenders, and guilty of the breach of the King's laws.

This commission by which we sit, and you are summoned, doth in its nature extend to all offences whatsoever against the laws of the land, treasons, misprisions of treasons, felonies, and all other crimes and offences against the King and his government, such as are vulgarly called Pleas of the Crown; they all fall under our cognizance and your enquiry in a general manner. But I must tell you, there is a particular occasion for this commission at this time. His Majesty having information of some evil, traiterous designs against his person and government, has thought fit to direct a due examination of them, and that the persons may be brought to condign punishment who shall be found guilty thereof. You must not therefore expect any general and formal charge from me; truly I came hither this morning, with an apprehension, that you had had your directions given you before by the Recorder, for it is our usual way not to come until the juries are sworn in this place, and their directions given them; but since I find it otherwise, I take it to be my duty to say something to you, but shall not go about now to make any such formal charge, as in commissions of this nature is wont to be done, nor to give an account of all offences that fall under your enquiry of a grand inquest, impannelled by virtue of such a commission at large; nor must you expect I should acquaint

Quaint you with all the crimes that you may enquire of as such an inquest.

I shall content myself so far, as on the sudden I can recollect my thoughts, to acquaint you with the nature of those bills; with the enquiry whereof, you shall at present, upon this occasion, be troubled, and your duty concerning that enquiry. I hinted to you at first, that they are matters of high-treason, which is a crime of the greatest and highest nature of any crime that can be committed against man; other crimes, as felonies, riots, trespasses, and things of that nature, they may occasion disorders and troubles in a state or a kingdom. But, I must tell you, treason strikes at the root and life of all; it tends to destroy the very government, both King and subjects, and the lives, interest and liberties of all, and therefore has always been looked upon as a crime of the most notorious nature that can be whatsoever, and accordingly punishments have been appointed for it of the highest and severest extremity. There was at common law great variety of opinions concerning treason, and there were many disputes about it what should be treason, and what not; and therefore it was thought fit, by the wisdom of our ancestors, to have a law to declare treason; and by the stat. of the 25th of Edward the III^d. there was a plain declaration made of what was treason, and what not: By that law, "for any one to compass, imagine, or intend the death of the King," (for I will give you no more of that statute, nor concerning the sense thereof, than may be for your purpose now); I say, by that law, "to compass, imagine, or intend the death of the King, and to declare it by overt-act, or to levy war against the King" were declared (amongst other things in that statute mentioned) to be high-treason: and this hath obtained for law among us ever since; and by that standing law, nothing is to be accounted treason, but what is therein par-

ticularly declared so, but upon many emergent occasions there hath been several other laws, as the case hath required now and then, for to declare and bring other particular crimes within the compass of treasons: So there was a law made in Queen's Elizabeth's reign, for enacting several crimes to be treasons, during her life, which was made upon the occasion of the inveterate malice of the Roman Catholics against her and her government; and so there hath been in other Kings reigns upon other occasions.

Amongst the rest, it was thought fit by the Parliament assembled here, in the thirteenth year of this present King, to make a particular law for the enacting and declaring several crimes to be treasons, during this King's life; they had great grounds, and too much occasion for it, and so they express it in the preamble of that law. The wounds which the then late treasons had made, that had so far obtained in this kingdom, were then still bleeding, ripe, and scarcely closed; many traiterous positions, and many seditious principles were spread, and had obtained and gained footing among the people of this kingdom; and the Parliament had reason to believe, that where they had been so maliciously bent against the King and his family, and had taken off his father, and maintained so long and dangerous a war against him, almost to the utter destruction and extirpation of him, and all his good subjects, and of his, and all our interests, properties, and liberties, and had almost destroyed a flourishing kingdom: here they had reason, I say, to be careful, to prevent the like mischiefs for the future; therefore, Gentlemen, they did think fit to make a new law for this purpose: and whereas the law before was, that it should be treason to compass, imagine, or intend the death of the King, so as it were declared by overt-act; now they thought it would be dangerous

ous to stay till an overt-act should declare the intention; for when they had seen such malicious and evil designs against the King and supreme authority; and that they had prevailed so far, as to murder one King, and banish another; and had gone a great way in the destruction of the government of this kingdom, absolutely to root it quite out: they had reason then, as much as they could, to prevent the designs before they should grow full ripe, and vent themselves in overt-acts; therefore it was enacted by that statute, made in the 13th year of this King's reign, "That if any one should compass, imagine, or intend the death of the King, or his destruction, or any bodily harm, that might tend to his death or destruction, or any maiming or wounding his person, any restraint of his liberty, or any imprisonment of him; or if any should design or intend to levy any war against him, either within the kingdom, or without, or should design, intend, endeavour, or procure any foreign Prince to invade these his dominions, or any other of the King's dominions, and should signify or declare this by any writing, or by any preaching or printing, or by any advised, malicious speaking, or words, this shall be High-Treason."

Now this hath altered the former law greatly, especially in two cases: First, as to levying war; the intention was not treason before, unless it had taken effect, and war had been actually levied: and then as to the designing and compassing the King's death, that was not treason, unless it was declared by an overt-act: and as to the imprisoning, or restraining of the liberty of the King, they of themselves alone were not High-Treason; but now by this law these are made treason, by this law, during his Majesty's life: and the very designing of them, whether they take effect, or not take effect, though it be prevented, (before any overt-act,) by the timely prudence

of the King and his officers, though it should be timely prevented, that there is no hurt done; yet the very design, if it be but uttered and spoken, and any ways signified by any discourse; this (Gentlemen) is made treason, by this act; and this hath wrought very great alteration in the case of treason now; formerly it was said, and said truly enough, that words alone would not make treason; but since this act, Gentlemen, words, if they import any malicious design against the King's life and government; any traiterous intention in the party; such words are treason now within this act: and this act was made with great prudence, and with great care to take off that undue liberty that men had taken to themselves; in those times of licentiousness, people had taken to themselves an undecent, and undue liberty to vent all their seditious and malicious minds one to another, without any restraint at all: therefore now, Gentlemen, you must consider, that words, if they signify or purport any traiterous intention or design in the party, either against the King or his government; either to restrain his liberty, or imprison him, or to do him any bodily hurt, or any crime of that nature; this is treason within this act of Parliament.

Look ye, Gentlemen, now as to the indictments that shall be brought before you, you are to consider these things: 1. Whether the matter contained in them, and which you shall have in evidence, the matter of treason within the former, or this act of Parliament? And here, if you doubt of it, then you must advise with us that are commissioned by his Majesty to hear and determine these crimes; and in matters of law we shall direct you: and you are to enquire if there be two witnesses that shall testify the matters in evidence to you, for without two witnesses no man is to be impeached within these laws; but if there be two witnesses that shall testify to you matters to make good the indictments, then you

you have ground to find the indictments. But I must tell you as to this case of two witnesses, it is not necessary that they should be two witnesses to the same words, or to words spoken at one time, or in the same place; that is not necessary: if one be a witness to words that import any traitorous design and intention, spoken at one time, and in one place; and another testify other seditious and traitorous words, spoken at another time, and in another place; these two are two good witnesses within this statute, and so it hath been solemnly resolved by all the Judges of England upon a solemn occasion.

Look ye, Gentlemen, I must tell you, That that which is referr'd to you, is to consider, whether upon what evidence you shall have given unto you, there be any reason or ground for the King to call these persons to an account; if there be probable ground, it is as much as you are to enquire into: you are not to judge the persons; but for the honour of the King, and the decency of the matter; it is not thought fit by the law, that persons should be accused and indicted, where there is no colour nor ground for it; where there is no kind of suspicion of a crime, nor reason to believe, that the thing can be proved, it is not for the King's honour to call men to an account in such cases: therefore you are to enquire, whether that that you hear be any cause or reason for the King to put the party to answer it. You do not condemn, nor is there such a strict enquiry to be made by you, as by others, that are sworn to try a fact, or issue: a probable cause, or some ground, that the King hath to call these persons to answer for-it, is enough, Gentlemen, for you to find a bill, 'tis as much as is by law required. Gentlemen, you must consider this, That as it is a crime for to condemn innocent persons, so it is a crime as great to acquit the guilty, and that God that requires one of them requires

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both; so that you must be as strict in the one, as you would be in the other. And let me tell you, if any of you shall be refractory, and will not find any bill, where there is a probable ground for an accusation, you do therein undertake to intercept justice, and you thereby make yourselves criminals, and guilty, and the fault will lie at your door. You must consider, Gentlemen, you are under a double obligation here to do right; you are under the obligation of Englishmen, as we are all members of one great body, of which the King is head; and you are engaged, as Englishmen, to consider, That crimes of this nature ought not to go unpunished: then you have an oath of God upon you, you are here sworn to do according to what the evidence is: Now therefore, if you have two witnesses of words that may import a treasonable design or intention in any of those parties, against whom you shall have indictments offered to you, you are bound both by the law of nature, as you are members of this body; and by the law of God, as you have taken an oath upon you, for to find those bills.

Gentlemen, Compassion or pity is not your province, nor ours in this case; there is no room for that in enquiries of this nature, that is reserved to an higher and superior power, from which ours is derived: Therefore, Gentlemen, I must require you to consider such evidence as shall be given you, and to be impartial according to what you shall hear from the witnesses, if you have ground, upon what evidence you shall have given to you, to believe, that there is any reason or cause for the King to call the persons named in such indictments, as shall be tendered to you, to answer for what is objected against them therein, you are to find those bills; that is all that I shall say to you, only pray God to direct you in your enquiry, that justice may take place.

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Then a bill of High-Treason was offered against the Earl of Shaftsbury; and Sir Francis Withins moved, That the evidence might be heard in court.

L. C. J. Gentlemen of the Jury, you hear it is desired by the King's Council, (and that we cannot deny) that the evidence may be publickly given, that it may not be hereafter in the mouths of any ill-minded persons abroad, to scatter any mistakes or untruths up and down; or to slander the King's evidence, or to say any thing concerning them that is not true: therefore we cannot deny this motion of the King's Council, but desire that you will take your places, and hear the evidence that shall be given you.

The Jury then desired a copy of their oath, which the court granted, and then they withdrew. After some little time they returned, and then the Clerk called them by their names.

Foreman. My Lord Chief Justice, it is the opinion of the Jury, that they ought to examine the witnesses in private, and it hath been the constant practice of our ancestors and predecessors to do it, and they insist upon it as our right to examine in private, because they are bound to keep the King's secrets, which they cannot do, if it be done in court.

L. C. J. Look ye, Gentlemen of the Jury, it may very probably be, that some late usage has brought you into this error, that it is your right; but it is not your right in truth: For I will tell you, I take the reason of that use for Grand Juries to examine the witnesses privately and out of court, to comply with the conveniences of the court, for generally upon such commissions as these are, the business is much; and at gaol deliveries there are a great many persons to be indicted and tried, and much other work besides, of other natures, to be done: and if at such times we should examine all businesses publickly in the court,

it would make the business of these commissions of a wonderful great length and cumbrance. Therefore the Judges, for the conveniency of the matter, have allowed, that witnesses should go to the Jury, and they to examine them; not that there is any matter of right in it, for without question originally all evidences were given in court; the Jury are officers and ministers of the court by which they enquire, and evidence sure was all given in court formerly; and the witnesses still are always sworn in court, and never otherwise. And, Gentlemen, I must tell you, 'tis for your advantage, as well as for the King's, that it may be sure, that you comply with your evidence, that you do nothing clandestinely; therefore 'tis for your advantage that this is done, and the King likewise desires it. Now I must tell you, that if the King require it of us, and it is a thing that is in its nature indifferent, we ought to comply with the King's desire, to have it examined in court; you shall have all the liberty that you can have in private; what question soever you will have asked, yourselves shall ask it, if you please, and we will not cramp you in time, nor any thing of that nature. Therefore, Gentlemen, there can be no kind of reason why this evidence should not be given in court. What you say concerning your keeping your counsels, that is quite of another nature, that is, your debates, and those things, there you shall be in private for to consider of what you hear publickly. But certainly it is the best way, both for the King, and for you, that there should in a case of this nature, be an open and plain examination of the witnesses, that all the world may see what they say.

Foreman. My Lord, if your Lordship pleases, I must beg your Lordship's pardon; if I mistake in any thing, it is contrary to the sense of what the Jury apprehend. First, They apprehend that the
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very words of the oath doth bind them, it says, "That they shall keep the council's, and their own secrets:" now, my Lord, there can be no secret in public; the very intimation of that doth imply, that the examination should be secret; besides, my Lord, I beg your Lordship's pardon if we mistake, we do not understand any thing of law.

Mr. *Papillon*. Your Lordship is pleased to say, that it hath been the common usage and practice; sometimes, my Lord, we have heard, that that hath been the law of England, that hath been the custom of England: If it be the ancient usage and custom of England, that hath never been altered from time to time, and hath continued so, we desire your Lordship's opinion upon that, as we would not do any thing that may be prejudicial to the King, so we would not do the least that that should be prejudicial to the liberties of the people; if it be the ancient custom of the Kingdom to examine in private, then there is something, may be very prejudicial to the King in this public examination; for sometimes in examining witnesses in private, there come to be discovered some persons guilty of treason, and misprision of treason, that were not known, nor thought on before. Then the Jury sends down to the court, and gives them intimation, and these men are presently secured; whereas, my Lord, in case they be examined in open court publicly, then presently there is intimation given, and these men are gone away. Another thing that may be prejudicial to the King, is, that all the evidences here will be fore-known before they come to the main trial upon issue by the Petty-Jury; then if there be not a very great deal of care, these witnesses may be confronted by raising up witnesses to prejudice them, as in some cases it has been:

then besides, the Jury do apprehend that in private, they are more free to examine things in particular for the satisfying their own consciences, and that without favour or affection; and we hope we shall do our duty.

L. C. J. Look ye, Mr. Papillon, it is reasonable that we should give you our advice in this case: I must tell you, if you had considered of what I had said before, I thought I had obviated, these objections: First, as to that you do say that you are bound to conceal your counsels, and the King's secrets, that is very true; as to your counsels, that is, your debates, you are bound to conceal them: as to the King's secrets, so long as he will have them kept secret, you are bound to keep them so too, but it doth not deprive the King of the benefit of having it public, if he have a desire for it; you don't break your oath, if the King will make it public; you don't make it public, 'tis the King does it. Then as to that that you do say, that you apprehend the common usage of the kingdom to be a law; that is true, Mr. Papillon, in some sense; a constant and uninterrupted usage goes for a law among us; but I thought I had told you before, that both of ancient and later times there have been examinations of the witnesses in court in cases of this nature; and we are not without precedents of it every year, every term, continually from time to time, evidence is heard in court by the grand jury; it is as usual a thing with us, as any thing, if it be desired, nothing more frequent, or more common: I never heard it denied, or stood upon by any grand jury, in my life, till of late here; you may be instructed with a thousand presidents, for I am sure it is a common and ordinary case upon such occasions, if desired to hear the evidence in court.

Look ye, Gentlemen, as to that case that you have of the King's affairs, the
King

King has reason to take it well that you are so careful for them; and that you are so mindful of his concerns, he hath a great deal of reason to think well of you for it: and, Gentlemen, consider this, that his Majesty's Council have certainly considered of this evidence, before they brought this to a public enquiry; or else it would be a hard thing if they should come raw, and not know what the witnesses can say; for though you are the jury to hear the witnesses, yet you must consider, that the King's Council have examined whether he hath cause to accuse these persons, or not; and, Gentlemen, they understand very well, that it will be no prejudice to the King to have the evidence heard openly in court; or else the King would ne'er desire it.

Foreman. My Lord, the Gentlemen of the jury desire that it may be recorded, that we insisted upon it as our right; but if the court o'er rule, we must submit to it.

L. C. J. Here are enough persons to take notice of it; to make records of such things, is not usual; it is not our business here to record every thing, that every man will desire to be recorded: we can record nothing but what is in order to the proceedings, but notice enough is taken of it; you need not fear but that there will be witnesses enough.

L. C. J. North. Gentlemen, I must say something to fortify what my Lord Chief Justice has said: if any of us had been of a different opinion, we would have spoken it; the same thing was stood upon, and discoursed on the last sessions, and then all the Judges were of this opinion, and in what all the Judges agree to, you should acquiesce. I must tell you from my own experience; where the King will, he ought to have it kept secret: I have not known it done publicly in the orderly course of business; but I have often known where it

hath been desired by those which prosecute for the King, that evidence hath been given openly; and I never knew it denied; if any of my brothers think otherwise, I desire they would speak; but, I tell you, as to my experience, this is the case.

Mr. Sheriff P. I desire the witnesses may be kept out of the court, and called one by one.

L. C. J. It is a thing certainly, that the King's Council will not be afraid of doing; but Sheriffs do not use to move any thing of this nature in court, and therefore 'tis not your duty, Mr. Sheriff, to meddle with it.

Sheriff P. It was my duty last time, my Lord, and appointed.

Att. Gen. [Sir Rob. Sawyer.] You were acquainted 'twas not your duty last time, and you appear against the King.

Then the Indictment was read.

London ss. THE jurors for our Sovereign Lord the King, upon their oaths present, that Anthony Earl of Shaftsbury, late of the parish of St. Martin's in the Fields, in the county of Middlesex, as a false traitor against the most illustrious, and most excellent Prince, our Sovereign Lord Charles II. by the grace of God, England, Scotland, France, and Ireland, King, his natural Lord, the fear of God in his heart not having, nor weighing the duty of his allegiance; but being moved and seduced by the instigation of the Devil, the cordial love, and true, due, and natural obedience, which true and faithful subjects of our said Sovereign Lord the King, towards him our said Sovereign Lord the King, should, and of right ought to bear, wholly withdrawing, and with all his strength, intending the peace and common tranquillity in this kingdom of England, to disturb, and war and rebellion against our said Sovereign Lord the King, to

to stir up and move, and the government of our said Sovereign Lord the King, within this kingdom of England, to subvert, and him our said Sovereign Lord the King, from the title honour and regal name of the imperial crown of his kingdom of England to depose and deprive, and him our said Sovereign Lord the King to death and final destruction to bring and put, the 18th day of March, in the three and thirtieth year of the reign of our Sovereign Lord, Charles the Second, now King of England, and divers other days and times, as well before as afterward, in the parish of St. Mary Le Bow, in the ward of Cheap, London, traiterously compassed, imagined and intended the death and final destruction of our said Sovereign Lord the King, and the ancient government of his kingdom of England, to change, alter, and wholly to subvert, and him our said Sovereign Lord the King, from the title, honour, and kingly name of his imperial crown of this kingdom of England, to depose and deprive, and war and rebellion against our said Sovereign Lord the King, to move and levy within this kingdom of England; and his said most wicked treasons, and traiterous compasses, imaginations and purposes aforesaid, to fulfil and perfect, he the said Anthony Earl of Shaftsbury, as a false traitor, with divers armed men, subjects of our said Sovereign Lord the King, then being, maliciously, traiterously and advisedly did provide and prepare to be aiding to him the said Earl of Shaftsbury, to fulfil and perfect his treasons aforesaid. And his said wicked treasons, traiterous compasses, imaginations and purposes, the sooner to fulfil and perfect, he the said Anthony Earl of Shaftsbury as a false traitor, with one John Booth, and other subjects of our said Lord the King, then and there traiterously assembled, met and consulted; and the same wicked treasons, and traiterous compasses, imaginations and purposes aforesaid, then

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and there to the said John Booth, and other persons, to the jury unknown, in the hearing of divers liege subjects of our Sovereign Lord the King, then and there present, openly, publicly, maliciously, traiterously and advisedly did say and declare, and to persuade and induce the said John Booth to be aiding and assisting in his said treasons, compasses, imaginations and purposes, he the said Anthony Earl of Shaftsbury, as a false traitor, maliciously, advisedly, and traiterously, the said 18th day of March, in the three and thirtieth year of the reign of our said Sovereign Lord the King, at the parish and ward aforesaid, within the city of London aforesaid, falsely, advisedly, subtilly, maliciously and traiterously said, asserted and declared, that in a short time the Parliament was to sit at Oxford, and that he the said Anthony Earl of Shaftsbury had inspected the elections, and considered the inclinations and dispositions of the generality of the members of Parliament elected; and that he the said Anthony Earl of Shaftsbury was satisfied that the Parliament would insist upon three matters, (to wit) "The Bill of Exclusion against the Duke of York: The Abolishing the Act of Parliament of the 35th of Queen Elizabeth, and the passing of a New Bill for uniting Protestant Dissenters;" with divers other good and wholesome bills. To which he the said Anthony Earl of Shaftsbury was certain that the King's Majesty would refuse to give his royal assent; and therefore he the said Anthony Earl of Shaftsbury did expect that there would be a division between the King's Majesty and the Parliament; and that many noble Lords and worthy members of the Lower House did concur in the same opinion, and they were resolved to insist on the passing of those bills: And if the King's Majesty refused, that they (meaning him the said Anthony Earl of Shaftsbury, and the said noble Lords and worthy members) had provided

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provided strength to compel the King's Majesty to grant thereunto; and that for his part, he the said Anthony Earl of Shaftsbury had provided stout men to be commanded by Captain Wilkinson, (meaning one Henry Wilkinson, one of the subjects of our said now Sovereign Lord the King); of which he the said Anthony Earl of Shaftsbury had agreed that the said John Booth should be one.

"And further, the jurors aforesaid upon their oath do say, that the aforesaid Anthony Earl of Shaftsbury, his said wicked treasons, and traitorous imaginations, to fulfil, perfect, and bring to effect afterwards; to wit, the said eighteenth day of March, in the thirty-third year of his said now Majesty's reign, in the parish and ward aforesaid, within the city of London aforesaid, as a false traitor in the presence and hearing of divers liege people of our Sovereign Lord the King, then and there present, openly and publicly, falsely, maliciously, advisedly and traiterously said, asserted, published, and with a loud voice declared, that our said now Lord the King was a man of no faith, and that there was no trust in him; and that our said Lord the King deserved to be deposed, as well as Richard the Second, late King of England, deserved.

"And further, the jurors aforesaid upon their oath do say, that the said Anthony Earl of Shaftsbury, his said wicked treasons, and traitorous imaginations aforesaid, to be fulfilled and perfected, and brought to effect the said 18th day of March, in the three and thirtieth year of his said now Majesty's reign, in the parish and ward aforesaid, in the city of London aforesaid, as a false traitor, in the presence and hearing of divers liege subjects of our said Lord the King then and there present, openly and publicly, falsely, maliciously, advisedly, and traiterously said, asserted, published, and with a loud voice declared, that he the said Anthony Earl of Shaftsbury would

never desist, until he had brought this kingdom of England into a Common-wealth without a King, and that the said Anthony Earl of Shaftsbury, and all those that him the said Anthony Earl of Shaftsbury would assist, (and he knew many that would assist him the said Anthony Earl of Shaftsbury) would make England a Common-wealth as Holland was: And that he the said Anthony Earl of Shaftsbury, and other traitors unknown, would live as in Holland, and that he our said Lord the King, and all his family, should be rooted out.

"And further, the jurors aforesaid do say, that the said Anthony Earl of Shaftsbury, his said wicked treasons, and traitorous imaginations aforesaid, to be fulfilled, perfected, and brought to effect afterwards, the said 18th day of March, in the three and thirtieth year of his said now Majesty's reign, in the parish and ward aforesaid, in the city of London aforesaid, as a false traitor, in the presence and hearing of divers liege subjects of our said sovereign Lord the King then and there present, openly, publicly, falsely, maliciously, advisedly, and traiterously said, asserted, published, and with a loud voice declared, that our now sovereign Lord the King was a man of an unfaithful heart, and not worthy to be trusted, and not fit to rule and govern, being false, unjust, and cruel to his people; and if he would not be governed by his people, that they (meaning him the said Anthony Earl of Shaftsbury, and other traitors to the jurors unknown) our said sovereign Lord the King would depose, against his allegiance and duty, and against the peace of our said sovereign Lord the King, his crown and dignity, &c. and against the form of the statute in such case made and provided, &c."

Sir *Fr. Withens*. Gentlemen of the jury, This is an indictment against the Earl of Shaftsbury; I shall not trouble you to open the indictment, because the evidence will

ill be somewhat long, I shall only tell you which way we shall go—

L. C. J. North. I do not know whether you desire the witnesses should be examined apart, do you desire that, gentlemen?

L. C. J. If you desire it gentlemen, they shall, for Mr. Sheriff hath nothing to do with it; but if you do desire it, you shall have the witnesses called one at a time, and all the rest shall be put out of the court.

Jury. My Lord, it is our desire.

L. C. J. We did deny it to Mr. Sheriff, because we are to keep men within their duty. Here it is not his duty to meddle with any thing of this nature.

Foreman. My Lord, we desire we may have a list of their names, and that they may be put apart, that they may not hear what one another say.

Sir Fr. Withens. My Lord, there is one part I would open.

L. C. J. There is no need for it at all—You shall have their names told you as they are called.

Harrison. My Lord, we pray we may have a list of their names.

L. C. J. If you desire it, you may have it, but it will be no advantage, for you will hear them named, and you may write them down as they come in.

Godfrey. We desire a list, for you told us, the King's counsel had examined them, and knew who they were.

L. C. J. I'll tell you the court is to have their names indorsed, for they don't bring witnesses in *bugger-mugger*, and I suppose they are indorsed here.

L. C. J. North. It is want of experience that makes you ask this; you are told, they are indorsed here.

L. C. J. Look you, Sir Samuel Barnardiston, you must have the indictment itself out with you, and all their names written upon the back of that indictment; but that you should desire to have the names of them in a roll beforehand, I do not know,

if there be any reason that you can assign for it.

Foreman. One thing more I have to say, that we may see the warrant by which the Earl of Shaftsbury was committed, for there are some other questions depend upon it.

L. C. J. That we cannot do, for the lieutenant of the tower hath that warrant, which he keeps for his indemnity; we cannot demand it from him upon any terms, any thing that you do desire of us, let us know, what is reasonable, and within our power, we will grant; and for other desires of yours, we tell the reason why we cannot grant them.

Papillon. My Lord, if you please, I will only acquaint you, that the gentlemen of the jury do seem to be of opinion, that your Lordship gives them leave to examine the witnesses; and the jury, because they would not put the court to too much trouble, do desire, that the witnesses should come one after another, and make their information, and then the jury would withdraw, to consider what proper questions to ask them, and come down again.

L. C. J. You shall do so, gentlemen. Look you, we did at the request of the last jury use the same method; after they had heard the witnesses what they gave in evidence, they came and desired leave to ask them some questions, which was granted, and they were all called one by one, and they did examine them; you shall do so, gentlemen.

Att. Gen. I was informed this morning, there were several questions to be asked of several witnesses to direct the grand jury how to demean themselves.

L. C. J. Mr. Attorney, the request is reasonable enough.

Harrison. We desire they may be examined one by one.

L. C. J. North. I suppose you don't stand upon it for these witnesses, they are clerks

clerks of the council, that only prove a paper which it seems was found in the Earl of Shaftsbury's house: if you will they may go out and be called in again.

Harrison. We humbly beg it.

Godfrey. I was foreman of the jury at Fitz-Harris's trial, and it was complained he had hard measure from some Irish witnesses, and that it was severe that they should be examined in troops: It hath troubled me since that I did not put them out and examine them apart.

L. C. J. Look ye, gentlemen, you that are witnesses for the King, you must go all out, and come in as you are called, one by one.

Which done, William Blathwait Esq; was produced, and a paper delivered in.

Mr. Saunders. (to *Mr. Blathwait.*) I pray Sir, give an account how you came by that paper.

W. Blathwait. This paper, gentlemen, was put into my custody by Mr. Gwyn, clerk of the council, who seized it among others in my Lord Shaftsbury's house; he gave me the key of the room where they were kept, and it hath been altogether in my custody, except for a short time that it hath been delivered to Mr. Secretary Jenkins, by whom it was re-delivered to me. Mr. Gwyn having seized papers at my Lord Shaftsbury's house, brought them to the council-office, and put them into one of the rooms, and locked the door, and delivered the key to me. When I was ordered by the committee of examinations, I fetched up the trunks and papers, and brought them into the council-chamber, and the trunks were opened in the presence of some of the Lords of the council, and in the presence of Mr. Wilson, who was appointed to attend there on the behalf of my Lord Shaftsbury, and he was always present when the papers were taken out of the trunks and bags: this was one paper, and

was taken out upon the 6th of July in the presence of Mr. Wilson, who took particular notice of this paper, as may appear by his own hand. The trunk was sealed, it was a great trunk, and it was opened in the presence of Mr. Samuel Willon and Mr. Starkey, who were both appointed by my Lord of Shaftsbury.

L. C. J. Was this paper found in one of those trunks or boxes that was delivered to you by Mr. Gwyn?

Blathwait. This paper was taken out of a velvet bag which Mr. Gwyn had put into the great trunk, which trunk was sealed and opened in the presence of Mr. Wilson and Mr. Starkey.

Sir Fr. Wilkens. Did you find that paper in the trunk?

Blathwait. I took this and others out of the velvet bag which was in the great trunk.

L. C. J. Call Mr. Gwyn to give an account where he found these papers. Look you, gentlemen of the jury, you hear what his evidence is, would you ask him any thing while he is here?

Then Mr. Gwyn coming in.

L. C. J. Where had you the trunk you delivered to Mr. Blathwait?

Gwyn. My Lord, on the second of July by a warrant from the Secretary, I was commanded to go to my Lord Shaftsbury's house to search his papers, I did there meet with a great many papers, and I took a note how I had parted them, and into what parcels I had put the papers; there were several sorts of them in a great hair trunk, and there was a velvet bag in which I put some papers that were loose in my Lord's closet above stairs. My Lord Shaftsbury as soon as I came gave me the keys, and told me where his closets were, and said he would seal them up with his own seal: I staid for it, but he sent me word by a gentleman that I might put my own seal if I pleased: I did put my seal upon the trunk, but

but afterwards being sent another way, I delivered it to this gentleman Mr. Blathwait: Whether any of the papers were taken out afterwards I cannot tell.

L. C. J. Mr. Gwyn, that your evidence may be the better understood, tell me, were all the papers that were in that velvet bag in my Lord Shaftsbury's closet?

Gwyn. In my Lord Shaftsbury's closet above-stairs.

L. C. J. This you swear; when you delivered it to Mr. Blathwait, all the papers were in that bag; was there nothing in that bag, but what you took in my Lord Shaftsbury's closet?

Gwyn. Nothing, my Lord.

Look you gentlemen, you do observe that this paper was put into the bag by Mr. Gwyn, and Mr. Blathwait swears he found it in the bag, and delivered it to Mr. Secretary Jenkins; therefore if you please Mr. Secretary Jenkins, you shall be sworn whether that paper was delivered to you by Mr. Blathwait, because we would clear it as we go, whether that be the paper was delivered to Mr. Secretary Jenkins by Mr. Blathwait: I pray, Sir, was that the paper that Mr. Blathwait did deliver into your hands?

Sec. Jenkins. My Lord, this is the paper, this paper was delivered into my hands by Mr. Blathwait in the council-chamber. I cannot say that this numerical paper was taken out of the velvet bag; but there were a great many papers taken out of it, and I having the honour to be at the examination of the papers, this was ordered to be put (and was put) into my hands with nine papers more.

L. C. J. Was it out of your hands?

Sec. Jenkins. It was out of my hands; for upon Monday last I took out the nine papers intrusted with me, and this tenth out of my desk, and caused my servant to mark them by numbers. Then I sealed up these papers and sent them to Mr. Graham. Mr.

Graham brought them back again to me without any alteration whatsoever; then I put this tenth paper into the hands of Mr. Blathwait again. All the while it was in my hands, it was under lock and key, and none of my servants saw it, but the time it was numbered; and no manner of alteration was made in this, or any other of the nine papers.

L. C. J. Now it appears this was the paper taken in my Lord Shaftsbury's closet.

Then this paper was read as followeth:

"We the knights, &c. finding to the grief of our hearts, the Popish Priests and Jesuits, with the Papists and their adherents and abettors have for several years past pursued a most pernicious and hellish plot, to root out the true Protestant religion as a pestilent heresy, to take away the life of our gracious King, to subvert our laws and liberties, and to set up arbitrary power and Popery.

"And it being notorious that they have been highly encouraged by the countenance and protection given and procured for them by J. D. of Y. and by their expectations of his succeeding to the crown, and that through crafty Popish councils his designs have so far prevailed, that he hath created many and great dependents upon him by his bestowing offices and preferments both in church and state.

"It appearing also to us, that by his influence mercenary forces have been levied and kept on foot for his secret designs contrary to our laws; the officers thereof having been named and appointed by him, to the apparent hazard of his Majesty's person, our religion and government, if the danger had not been timely foreseen by several Parliaments, and part of those forces with great difficulty, caused by them to be disbanded at the kingdom's great expence: and it being evident, that notwithstanding all

all the continual endeavours of the Parliament to deliver his Majesty from the councils, and out of the power of the said D. yet his interest in the ministry of state and others have been so prevalent, that Parliaments have been unreasonably prorogued and dissolved when they have been in hot pursuit of the Popish conspiracies, and ill ministers of state their assistants.

"And that the said D. in order to reduce all into his own power hath procured the garrisons, the army and ammunition, and all the power of the seas and soldiery, and lands belonging to these three kingdoms to be put into the hands of his party and their adherents, even in opposition to the advice and order of the last Parliament.

"And as we considering with heavy hearts how greatly the strength, reputation and treasure of the kingdom both at sea and land is wasted and consumed, and lost by the intricate expensive management of these wicked destructive designs; and finding the same councils after exemplary justice upon some of the conspirators, to be still pursued with the utmost devilish malice, and desire of revenge; whereby his Majesty is in continual hazard of being murdered to make way for the said D's advancement to the crown, and the whole kingdom in such case is destitute of all security of their religion, laws, estates, and liberty, sad experience in the case, Queen Mary having proved the wisest laws to be of little force to keep out Popery and tyranny under a Popish Prince.

"We have therefore endeavoured in a Parliamentary way by a bill for the purpose to bar and exclude the said Duke from the succession to the crown, and to banish him for ever out of these kingdoms of England and Ireland. But the first means of the King and kingdom's safety being utterly rejected, and we left almost in despair of obtaining any real and effectual security, and

knowing ourselves to be entrusted to advise and act for the preservation of his Majesty and the kingdom, and being persuaded in our consciences that the dangers aforesaid are so eminent and pressing, that there ought to be no delay of the best means that are in our power to secure the kingdom against them. We have thought fit to propose to all true Protestants an union amongst themselves by solemn and sacred promise of mutual defence and assistance in the preservation of the true Protestant religion, his Majesty's person and royal state, and our laws, liberties and properties, and we hold it our bounden duty to join ourselves for the same intent in a declaration of our united affections and resolutions in the form ensuing."

"I A. B. Do in the presence of God solemnly promise, vow, and protest to maintain and defend to the utmost of my power, with my person and estate, the true Protestant religion, against Popery and all Popish superstition, idolatry, or innovation, and all those who do or shall endeavour to spread or advance it within this kingdom.

"I will also, as far as in me lies, maintain and defend his Majesty's royal person and estate; as also the power and privilege of Parliaments, the lawful rights and liberties of the subject against all incroachments and usurpation of arbitrary power whatsoever, and endeavour entirely to disband all such mercenary forces as we have reason to believe were raised to advance it, and are still kept up in and about the city of London, to the great amazement and terror of all the good people of the land.

"Moreover J. D. of Y. having publicly professed and owned the Popish religion, and notoriously given life and birth to the damnable hellish plots of the Papists against his Majesty's person, the Protestant religion, and the government of this kingdom; I will never consent that the said J. D. of Y. or any other, who is, or hath been a Papist,

Papist, or any ways adhered to the Papists in their wicked designs, be admitted to the succession of the crown of England; but by all lawful means and by force of arms, if need so require, according to my abilities, will oppose him, and endeavour to subdue, expel, and destroy him, if he come into England, or the dominions thereof, and seek by force to set up his pretended title, and all such as shall adhere unto him, or raise any war, tumult, or sedition for him, or by his command, as public enemies of our laws, religion and country.

"To this end we and every one of us whose hands are here underwritten, do most willingly bind ourselves and every one of us unto the other jointly and severally, in the bond of one firm and loyal society or association, and do promise and vow before God, that with our joint and particular forces we will oppose, and pursue unto destruction all such as upon any title whatsoever shall oppose the just and righteous ends of this association, and maintain, protect and defend all such as shall enter into it in the just performance of the true intent and meaning of it. And lest this just and pious work should be any ways obstructed or hindered for want of discipline and conduct, or any evil minded persons under pretence of raising forces for the service of this association, should attempt or commit disorders; we will follow such orders as we shall from time to time receive from this present Parliament, whilst it shall be sitting, or the major part of the members of both houses subscribing this association, when it shall be prorogued or dissolved: and obey such officers as shall by them be set over us in the several counties, cities, and boroughs, until the next meeting of this or another Parliament; and will then shew the same obedience and submission unto it, and those who shall be of it.

"Neither will we for any respect of persons or causes, or for fear, or reward separate ourselves from this association, or fail in the prosecution thereof during our lives, upon pain of being by the rest of us prosecuted, and suppressed as perjured persons, and public enemies to God, the King, and our native country.

"To which pains and punishments we do voluntarily submit ourselves, and every one of us without benefit of any colour or pretence to excuse us.

"In witness of all which premises to be inviolably kept, we do to this present writing put our hands and seals, and shall be most ready to accept and admit any others hereafter into this society and association."

Sir Fr. Withens. This paper is very plausibly penned in the beginning, and goes a great way so, but in the last clause but one, there they come to perfect levying of war; for they do positively say, they will obey such officers as either the Parliament or the major part of them, or after the Parliament is dissolved, the major part of those that shall subscribe this paper shall appoint, they will obey all such officers.

Foreman. Pray what date is this paper of?

Sir Fr. Withens. It was after the bill for the exclusion of the Duke of York, for it says that way failing, they would do it by force.

Foreman. There is no hand to it at all?

Sir Fr. Withens. No, none at all. One thing I had forgot, that they would join to destroy the mercenary forces about London, which is downright levying of war against the King and his guards.

Mr. Sanders. The design of it is pretended to oppose Popery and arbitrary power, and destroy the Papists; but that doth

doth not seem so much in itself: but when you have heard the evidence you will hear who were the Papists that were to be destroyed by this army.

John Booth.

Jury. He has stood in the face of the court all this while.

L. C. J. When did Mr. Booth come down?

Jury. He was here before we went up, my Lord, and hath been here ever since.

L. C. J. Look ye, Gentlemen, they tell you he was carried away, and came down but now.

Booth. No, my Lord, I came down but now.

Shepherd. My Lord, we desire a list of their names, that we might know who is here, and who is not.

Godfrey. This man hath been here all this while, and all the others may be here, for ought that I know.

Sir Fr. Wilbans. In the first place give an account what discourse you have had with my Lord Shaftsbury.

L. C. J. Speak out that the Jury may hear you.

Booth. I will speak as loud as I can. In the month of January, about the middle of January last, I was introduced into my Lord Shaftsbury's acquaintance by one Captain Henry Wilkinson. I say I was introduced into my Lord Shaftsbury's acquaintance by one Captain Henry Wilkinson. This Captain Wilkinson is a Yorkshire gentleman, he has known me above twenty years, and he and I have had familiar conversation a long while; so waiting upon my Lord Shaftsbury, our first business that we went about was, Captain Wilkinson did pretend to receive a commission from my Lord Shaftsbury, and some others of the Lords Proprietors of the Palatinate of Carolina to be their Deputy-Governor; and he told me the Prospect of that journey,

like to be very hopeful, and that his

interest was good, and that he could procure me a commission, and such a number of acres for quality and quantity as I did desire: and he said he did not design to go over immediately in his own person, but he would send his eldest son, and his youngest son, and if he went, he would return again as occasion should serve. I consented to him in all this, and we discoursed it divers times together, and we went to my Lord Shaftsbury on purpose to receive commissions in order to this purpose. The first time I went there was the Earl of Craven, Sir Peter Colleton, one Archdell, a quaker; I thought him a quaker because he kept his hat on, when the rest of the Lords stood bare in civility to him. We discoursed the thing about Carolina. After this, and before, Captain Wilkinson and I had several discourses about the juncture of affairs in these times, though I knew him to be an old royalist, and one that served his Majesty and his late father very much in the wars; yet being under great disappointments of preferments at court, and missing the reward he expected from the King, his heart was turned another way, and he had repented himself of those services he had done for the King, and was become a man of another opinion; and there was some inducements upon me that I was inclined to the same opinion: so he expressed himself to my Lord, and so from one thing to another we went on in discourse, and related the several Parliaments, and the proroguing them, and the disappointments of the people, and the fear of Popery and arbitrary power: and this was not done once, nor twice, nor ten times; for I cannot enumerate them, for we kept a continual club, and conversed together familiarly near three quarters of a year. After this first acquaintance with my Lord Shaftsbury at his house, I did frequently go with Captain Wilkinson, and between Christmas and March four or five times: and I observed this,

this, that when we came to my Lord Shaftsbury's they were cautious in our accession: In the first place it was to be known by some of the servants, who he was in company with: and in the second place the names were sent up, who they were, that were to speak with him: sometimes we had an alehouse at the Bell in the same street: (I forget the name of the street) we staid at the alehouse till we had a fit time, Captain Wilkinson had acquaintance with his porter and his gentleman of his chamber: and so we often discoursed. And from the concerns of Carolina we fell to matters more public concerning the state. I remember he would use to inveigh sharply against the times, and look upon himself as not so valued, nor so respected, nor in those places and dignities as he expected he should be, and seemed to be discontented, and he did fear that Popery would be introduced, and arbitrary power: and when Parliament-men were to be elected, there came every week news, bringing particulars of such boroughs and counties as had made particular elections for members for Parliament; whether Knights, Citizens, or Burgeſſes: and he would often consider that Parliament that was to sit at Oxford, what they were as to their inclinations and dispositions: and he said, they would insist upon the same things the other Parliaments before had done. Particularly he said the Parliament would never grant the King any assistance of money, nor satisfy him in those things that he desired, unless he gave the people first satisfaction in those things that they insisted on before, and he believed would insist upon after; and particularly the bill of excluding the Duke of York from the crown, another was the abolishing the statute of the 35th of Elizabeth: and the third was giving his royal assent, for the passing a new bill whereby all the dissenting Protestants, nonconformists, or what you

will term them, should be freed from those penalties and ecclesiastic punishments that they are subject to by the present established law: and he said, if these and some other wholesome laws and bills were past by the royal assent of the King, he believed that when the people had received this security and satisfaction, that they would be very willing to grant the King such accommodations of money by way of assessment, or so, as his necessary occasions should also require: but without this he believed, there would be a breach between the King and the Parliament, and that they had ordered the Parliament should meet at Oxford, and not at this metropolis at London, where they might go on without fear of being over-awed: that this was an intention to awe the Parliament. But he said, himself and divers noble Lords, and members of the House of Commons had considered themselves and their own safety, and that they judged it dangerous to go to Oxford, where they were sure the guards, the retinue of the court, and the assistance of the scholars (which usually incline to the crown) might so over-awe the Parliament, that they might not so freely proceed in a way for the public good as they intended; and therefore he and others had considered with themselves, that it were fit for them to have guards and send them thither; and to this purpose he had established a matter of fifty men, persons of quality, that he believed would have men along with them; and he intrusted Captain Henry Wilkinson with the command of these men, and they were to come to Oxford at such a time, and if there were any breach between the King and the Parliament, or any violence offered to any of these members by the guards, or retinue of the court, that then these men with others that other Lords had provided, should repel his force, by greater force, and should purge the guards of all the

stories, and such as were against the Protestant religion, and the established laws of the land; and likewise these men should be ready to assist himself, and those other persons in his confederacy, to purge from the King those evil counsellors which were about him: particularly there were named, the Earl of Worcester, my Lord Clarendon, my Lord Hallifax, my Lord Feverham, and Mr. Hyde, now Lord Viscount Hyde: and these persons were looked upon to be dangerous, and gave the King evil advice, and made him continue so very deaf to what the Parliament urged him to; and therefore they said they would not only purge the guards, and repel that force by a greater force, but also take those Lords by violence from the King, and bring the King to London, to the chief metropolitan city, where those things should be established, which they designed for their safety in these two respects, for the preserving the Protestant religion, and likewise for the keeping and defending us safe from arbitrary power and government. Upon this Captain Wilkinson did desire me that I would be one of those under his command: this I did consent to. And he requested me further, that I would provide for myself horse and arms; and likewise arms for my man, and he would provide me a horse for my man. I did accordingly provide arms for myself, and a good stone-horse for myself, and arms for my man before the Parliament did sit at Oxford. I think the 23d of March, I do not punctually remember the day, and when the Parliament was set, we enquired and heard how things went on, and found that it was as my Lord Shaftsbury had predicted, that the Parliament did insist upon those very things that he told they would do, but never believed or imagined they would be so soon dissolved. Upon Thursday before the Parliament was dissolved, Captain Wilkinson told me he expected

that very week to have a summons to go up to Oxford with those men that were listed with him; but then Saturday's news came of the dissolution of the Parliament, and therefore it took no further effect. The whole matter, the main design was this, That my Lord Shaftsbury should have so many men to attend him there for the security of his person, and likewise to repel the force of the King's guards, or any other person that followed the King; and also to remove from him those five Lords, and bring the King back to London, to establish those laws that I have mentioned.

Sir Fr. Witbins. Pray what time did you discover this?

Booth. About six weeks ago.

Sir Fr. Witbins. Had you any discourse with the Earl of Shaftsbury after Captain Wilkinson spoke with you, or before the sitting of the Parliament?

Booth. I said before that the first motion of these fifty men that were to be my Lord Shaftsbury's guard came from Captain Wilkinson; but after this when I went with Captain Wilkinson to my Lord Shaftsbury, the same thing was discoursed there. The last time I was with my Lord Shaftsbury was about a week before he went to Oxford, about ten days before the Parliament sat, or a week, and then I heard the same discourse from my Lord Shaftsbury's own mouth.

Sir Fr. Witbins. Had you any other discourse with my Lord Shaftsbury?

Booth. I say I made three or four visits between Christmas and March, and we had discourse every time particularly about the King's person, and if the King did refuse these motions, that then these men were to be taken from him, and he repelled with a greater force, and be brought to it by force.

Sir Fr. Witbins. Did you ever make any solicitation to any to make this discovery?

Booth.

Booth. Thus far I did, and I will tell you the whole matter in that point; there was one Walter Banes an acquaintance of mine, and I found that he had at Wilkinson's request engaged himself in some business that one Brownrig an attorney in Yorkshire had writ to him about, concerning some men that were to swear against my Lord Shaftsbury. I asked Mr. Banes what men these were, he said, he thought they were Irishmen. I said, I don't know what conversation in that nature my Lord Shaftsbury might have with Irishmen, for I know none of them; but I am satisfied that he had conversation tending to those ends that you speak of with some Englishmen, and that I know. This Mr. Banes did take particular notice of, and he was very frequently upon me to tell him what the matter was, and I gave him some intimation of it. Truly it was very much upon my spirit, and I could not tell whether I was able to carry it through or not, or had better to let it alone as it was in silence: But discoursing still more with him, and at the result of that discourse we had by degrees, I did give him some intimation of it. And after that upon second thoughts I took a resolution to discover it; and when I did discover it, I do here in the presence of God declare, that no mortal did know any thing of what I had to say, in reference to the King; nor did I make any more applications in the world, but took pen, ink, and paper, and writ it down, and sealed it under a cover and sent it to the council.

Sir Fr. Wimbens. Gentlemen of the jury, would you ask him any questions?

Papillon. The jury told your Lordship before, that after all had been examined, they would consider what questions.

L. C. J. Where would you have these witnesses that have been examined to stand?

Papillon. We leave to the sheriffs to appoint a place for them.

L. C. J. To keep them apart is utterly impossible, for we must have as many rooms then, as there are witnesses.

Jury. Let one man keep with them.

L. C. J. Empty that place where they were the last time, and let them stand there.

Edward Turberville.

Sir Fr. Wimbens. Mr. Turberville, have you had any discourse with my Lord Shaftsbury?

Turberville. Yes, several times. In February last, I am not positive in the time, but about the beginning of the month, I waited upon my Lord Shaftsbury about some monies. I waited upon him to have his advice how I might come by it, and to gain my Lord Shaftsbury's letter in my behalf to the president of the council to stand my friend; and he said, there was little good to be had from the King, as long as his guards were about him; for were it not for his guards, we would quickly go down to Whitehall and obtain what terms we thought fit. Said I, my Lord, I suppose his guards can't defend him from the whole kingdom. His Lordship said that the rabble were all of that side, especially the people about Wapping, and Aldersgate-street; and the rich men of the city would vote for elections; but they could not expect they should stand by them in case there should be any disturbance, for they valued their riches more than their cause. And at Oxford I heard my Lord say again, he wondered the people of England should stickle so much about religion, and that if he were to choose a religion, he would have one that should comply with what was apt to carry on their cause.

Sanders. Had you any other discourse with him at any other time?

Turberville. I told you all that is material that I can say to it.

John Smith.

Smith

Smith. My Lord, I only beg a word or two from your Lordship, of some reflections cast upon me.

L. C. J. Go to your evidence.

Smith. My Lord, this is something to my evidence.

L. C. J. You may take another time for that.

Smith. My Lord, it hath been reported about in coffee-houses and taverns, that I should swear there was a general design against his Majesty; and that I swore it before the King and Secretary of state; and that I also swore it at the trial of Mr. Colledge and Mr. Rowse: I take it upon my oath I never swore any such thing, neither can I swear there was a general design by the city, or the Parliament against the King.

L. C. J. Speak what discourse you have had with my Lord Shaftsbury.

Smith. My Lord, I suppose it is past all doubt, that I have been very often with my Lord Shaftsbury; and I have often in his discourse observed that he spake very irreverently and slightly of the King; sometimes saying he was a weak man, and sometimes saying he was an inconstant man; a man of no firm or settled resolution; and a man that was easily led by the nose, as his father was before him, by a Popish Queen, which was the ruin of his father: this was both in public and in private. I have also observed sometimes in his discourse, something that he mentioned of the Earl of Essex; and that the King should declare, that the Earl of Shaftsbury was not satisfied to be an ill man himself, but got over the Earl of Essex too; this the Earl of Shaftsbury declared publicly in his own house. Another story was of the rebellion of Scotland, that the King should say that the Earl of Shaftsbury was the chief promoter of that rebellion; and when this was told my Lord Shaftsbury, that he should send word back again to the King, "I am glad (says he)

that the King sees not his own danger, nor what he runs himself into; and pray tell him, that, if I were to raise a rebellion, I could raise another-guess rebellion than the rebellion was in Scotland." But now, as to the particular points I am to charge him with, I remember, my Lord, that my Lord Shaftsbury sent for me one time, and that by one Manly; sometimes they call him Major Manly, sometimes Captain Manly; and this man found me at Mr. Bethel's club in Newgate-street at the Queen's Arms; and there he told me my Lord Shaftsbury would speak with me that night. I immediately left the club and went to my Lord Shaftsbury's; and I was introduced into the dining-room, where there were two gentlemen in discourse with my Lord; and as soon as he saw me, he asked me how I did, I told him I was very well, and came in obedience to his command to wait upon him; for Major Manly told me your Lordship had a mind to speak with me: He said he had. Soon afterward, these two gentlemen went away. Upon this my Lord turns about, Mr. Smith, said he, Mr. Hetherington was with me this morning, and told me he was afraid the Irish witnesses would go over to the court party, and retract what they had said formerly. My Lord, says I, I know no person can better and with more ease, hinder that than your Lordship, by procuring some small allowance for them; for they complain much of poverty. Says he, Mr. Hetherington has the charge of them, and hath a special care of them, and I believe they don't want. My Lord, says I, I know nothing of that, he knows what provision he hath made for them. This is the thing, said my Lord, that I would have you do: They stand in great awe of you, and you must persuade them from going nigh that rogue Fitz-Gerald, that great villain, that is pampered up, and maintained by the King and the court-party, to stifle the plot in Ireland. My Lord, says I, do you think the King would be

be at such vast charges for to bring over witnesses, and at last maintain men to stifle this plot, for that is the way to stifle the plot in England too, as well as that. Says he, what is this frequent dissolutions and prorogations of Parliaments for, but to stifle the plot here, and to hinder the Lords in the tower to come to a trial? This is a strange thing, my Lord, said I, when he gave Dr. Oates, Mr. Bedlow and Mr. Dugdale such large allowances to prosecute this plot. Says my Lord, that is nothing, that may hold for a year or two, he may take it off when he will, but the chief means are put by, whereby we might find out the depth of this plot; and if Mr. Dugdale and Dr. Oates be knocked on the head, then where is this plot; then there will come an act of oblivion for them, and all things will be well as they were before. My Lord, said I, this is very strange to me. I can give you instance of it, says he, when I was lately in the tower, I told some I saw Popery coming in, and that it was hard to prevent it. I am sorry to hear it, said I, but what would you have me do with these Irish witnesses? Says he, persuade them not to go near Whitehall, nor this Fitz-Gerald. And, said he, one thing more, I would have you mind, Mr. Smith, that if the King were not as well satisfied with the coming in of Popery as ever the D. of York was, do you think the D. of York would be so much concerned in the bringing in of Popery as he is? I am sorry for it, my Lord if it be so. After this I parted with my Lord Shaftsbury, with full instructions from him to those Irish witnesses. I met Mr. Hetherington the next morning, and I told him that I was with my Lord Shaftsbury; says he, I know your business and would have you meet us at the Sun Tavern in the afternoon. My Lord, I went according to the time appointed, and met him at the Sun Tavern between six, or seven, or eight of the clock, as near as I can remember.

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When I came to them I began to open those great and horrid crimes that I heard Mr. Fitz-Gerald accused of, that he was a man came to discover a plot, and disowned it here, and retracted all he had said. I told them what a crime this was. In short, my Lord, they promised never to go near the man. I parted that night and came to my lodging, and the next morning Mr. Hetherington and one Mr. Bernard Dennis came to my lodging and told me, that this Bernard Dennis was ready to give in information against Fitz-Gerald, that he had tampered with him to forswear all he had sworn before. I went presently with Mr. Hetherington and Mr. Dennis to my Lord Mayor, who was then Sir Patience Ward; after we had told the business to Sir Patience Ward, Sir Patience asked this Dennis if there were any other persons present. Yes, says he, there was. Says Sir Patience, you are upon your oath, if you know not the nature of an oath, I will tell you. The information was drawn up; the copy of this information I carried to my Lord Shaftsbury and shewed it him, he read it, and was very well pleased with it, and said, Mr. Smith, don't you see the villainy of that man and that factious party, and that the King runs the same steps as his father did before him, how can any thing of this nature be done without the King and the court pampered him up? My Lord, said I, I think now the thing is clear. Ay, says he, these are the very same steps that his father followed when he was led by his Popish Queen, and the poor man doth not see his danger. I parted from my Lord, and came and gave an account of this very discourse to the club in Newgate-street, and they were glad of it, and I told what my Lord Shaftsbury said, that the King would never be quiet till he came to his father's end; he followed the same steps. Another thing that I have observed particularly be-

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fore the Parliament went to Oxford, I went to see him, and we fell into some discourse, and my Lord said there were great preparations made, and a great many gathered together upon the road between London and Oxford. My Lord, said I, what is the meaning of that? Any body may see, says he, that is only to terrify the Parliament to comply with the King's desire, which I am sure the Parliament never will, for we are as resolute now as ever; and more resolute, for we see clearly what the King aims at, and that is to bring in Popery. Which I told several years ago, and when I was last in the tower, but, says he, we have this advantage of him, if he offer any violence to us, (for we expect it,) that we have the nation for us, and we may lawfully oppose him, and he will meet with a very strong opposition; for all that come out of the country, shall be well horsed and well armed, and so we shall be all, and here is the city which now has a question in debate among them, whether they shall bear the charge of their own members or no, but they are willing to do it, and send so many men to wait upon them, and if we oppose the King as we may do, for it hath been done in former times, the whole nation is to stand by us, and as I said when I was in the tower, I would die, before I would ever bring in Popery or any thing of that nature.

Jury. Repeat that again.

Smith. He said, that the King, if he offer'd any violence at Oxford to the Parliament, he would meet with a strong opposition, and that the gentlemen that came out of the country were well provided with horse, arms, and men, to oppose him, and that they might lawfully do it if the King offered any violence to them whilst they sat, and that the nation stood by them, and that they did represent the nation, and that for his part he and all his friends would do it to the utmost of their power,

and, as old as he was, he would be one that would oppose it to his power. My Lord, said I, we can expect nothing but confusion from the Parliament, in this nature, for then we shall be involved in another civil-war, nothing else can put an end to our miseries, or make this nation a settled nation, but a civil-war. Then, my Lord said I, by this means we shall make an end of monarchy, or else enslave the nation to Popery for ever. No doubt of one, says he, but we are sure of one, for the nation is of our side, and the city you know how they are, and where ever they strike, I am sure the nation will, and this I'll stand and die by. This is the substance of what I have to say against my Lord Shaftsbury, and upon the oath I have taken, I am sure I have not added a word. One word more I have to say, 'tis reported I have been hired and suborn'd, I do admire why this city of London, where there are as worthy men, and as great lovers of the King and government as any in the world, should say any such thing; I was never suborn'd by them, nor never took a farthing of their money, nor never took a farthing of the King in my life.

L. C. J. Who supposes it?

Smith. 'Tis in print, my Lord, 'twas in the book that came out last night, it is suppos'd, my Lord, for it is in print.

L. C. J. I had reason to expect that there was no such objection.

Brian Haines.

Sanders. Give your knowledge of what discourse you have heard concerning my Lord Shaftsbury.

Haines. Sir, I have heard him villify the King very often, and he told me about the narrative that I made about Sir Edmond-bury Godfrey's death, Mr. Ivey and I went to him one day and he spoke to me of it, and I desired him not to expose my person to the King's anger, for I was sure he would never grant a pardon

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to any man that impeached the Earl of Danby. Says he, do not fear, if he doth not grant you a pardon, he makes himself the author of the plot; and, says he, the Earl of Essex, my Lord Maxfield and I, we do all resolve if you put it in writing, we will go to the King, and beg a pardon of his Majesty for you, and if he doth not grant it, we will raise the whole kingdom against him; for, says he, he must not expect to live peaceably in his throne, if he doth not grant it. For he makes himself author of the plot.

My Lord, said I, he hath dissolved so many Parliaments for the sake of the Earl of Danby, and prorogued so many Parliaments, therefore he will never grant me this pardon. Says he, do not fear, 'tis the best pretence we can have in the world, and if you will but put in writing, and let me read it, that I may give my opinion of it, the work is done; and if he doth not do it, we are prepar'd to rise arms against him. I was with him another time after I made this narrative, and he told me the two Mr. Godfreys were with the King at Windsor, and begged a pardon of his Majesty for me, but the King would not grant it, but if he be an honest man let him lie at my mercy, let him come in and declare what he knows. Said I, I would not have your Lordship expose my cause in these days. This is the best time for it in the world, says he, if he doth not do it, he can't expect to be long King of England. Pray my Lord, said I, what shall I do in the mean time? I will go beyond sea, said I. No, says he, don't leave the kingdom, he dares as well be hang'd as meddle with you. I desir'd him a second time not to expose me to the King's fury, and I prayed him to help me to a little money to go beyond sea, for I was sure I could not be safe in England. Says he, have a care of your self; but, says he, he dares as well be hang'd as meddle with you.

Then I was in close conference with him one day, and I gave him so exact an account of all transactions from King Charles the first's reign, the commencement or coming to the Crown, to this very day, that he was mightily satisfied, finding by me that I was a traveller, he was mightily pleased, and free with me. Pray, my Lord, what model do you take, or intend to do? says he, do you not think but there are families in England that have as great pretences to the Crown as the King? says he, there is the Duke of Bucks, in the right of his mother, she was descended from Edward, one of the Edwards, and in her right he claims the Barony of Ross, he hath as great a right to the Crown of England, as ever any Stewart of them all.

Jury. Speak that again.

Haines. I was in conference with my Lord Shaftsbury one day, and I gave him an exact account of all transactions, and I asked what they did intend to do with the government, if they pull'd the King down. Says he, do you think there are no families in England, that have as much pretence to the Crown as any of the Stewarts? I know none my Lord. Says he, there is the Duke of Bucks that is descended of the family of the Plantagenets; he named some of the Edwards, and in her right he should have the Barony of Ross, and in her right he has as good a title to the Crown of England as ever any Stewart had.

John Macnamarra sworn.

Sir Fr. Withins. Pray give an account to the jury of what discourse you have had with my Lord Shaftsbury.

Macnamarra. My Lord, I was with my Lord Shaftsbury a little before he went to Oxford, before the Parliament sat there, and my Lord told me at that time, that he would take care, together with those that were with him at Oxford, for the witnesses that were concerned in the Popish Plot.

Harrison. Speak out pray, Sir.

Macnamarra.

Macnamarra. My Lord told me he would take care, with those that were with him, for the witnesses that were concern'd in the Popish Plot; after my Lord went to Oxford, I writ him a letter, giving his Lordship to understand, that whereas his Lordship was pleased to promise, that he would take care of the witnesses, that he would be pleased to take care of me, as well as the rest of the witnesses; after my Lord came home from Oxford, I went to him, to see what was done. His Lordship was pleased to express himself and say, that the King was popishly affected and did adhere to Popery, and that he took the same methods that his father before him took, which brought his father's head to the block, and we will also bring his thither; and told me also, that he told some persons of quality that this would fall out five years before; at the same time my Lord told me, that there was a collection of money made, and that the meeting was at the Sun Tavern, and that there came a Tory Lord in to hinder their proceedings, but says he, we do remove to Ironmonger-Lane, and says he, you shall hear further in a fortnight. I came to my Lord a fortnight afterwards, and his Lordship was pleased to tell me, that there was provision made for the witnesses, and that it was in the hand of one Mr. Rowe that was servant to Sir Thomas Player; there was one Mr. Ivey, and I think my brother was by too, when his Lordship spake these words; he said that the King was a faithless-man, that there was no credit to be given to him, and that the Dutchess of Mazarine was his Cabinet Council, who was the worst of woman-kind. This is all that I have to say, my Lord.

Sir Fr. Withins. Do you remember nothing at any other time.

John Macnamarra. No.

Sir Fr. Withins. Did you hear any thing about deposing the King?

John Macnamarra. Yes, he did at the same time say, the King deserved to be deposed as much as ever King Richard the Second did.

Dennis Macnamarra.

Sanders. Tell these gentlemen whether you have had any discourse with the Earl of Shaftsbury.

Dennis Macnamarra. He said, my Lord, that the King was a man that ought not to be believed, and there was no belief in him, and that he ought to be deposed as well as King Richard the Second, and that the Dutchess of Mazarine was one of his Cabinet Council, and that he did nothing but by her advice.

Sir Francis Withins. Begin again.

L. C. J. Raise your voice a little, for the jury don't hear you,

Dennis Macnamarra. That the King is a man that ought not to be believed, that there was no belief in him, and that he ought to be deposed as well as King Richard the Second, and that the Dutchess of Mazarine was his Cabinet Council, and that he did nothing but by her consent.

L. C. J. Who was with you at that time?

Dennis Macnamarra. There was Mr. Ivey and my brother at his own house.

L. C. J. When was this?

Dennis Macnamarra. 'Twas at the latter end of March or the beginning of April.

Sir Fr. Withins. You say Mr. Ivey was by at the same time?

Dennis Macnamarra. Yes.

Sir Fr. Withins. Call Mr. Ivey.

Jury. What place was it in?

D. Macnamarra. In his own house.

Edward Ivey sworn.

Ivey. My Lord, soon after the Parliament was dissolv'd at Oxford, I was at my Lord Shaftsbury's house, where he was speaking against the King, and said, that he was an unjust man, and unfit to reign and that he was a Papist in his heart, and would introduce Popery

Jury.

Jury. Say that again.

Ivey. I tell you I was at my Lord Shaftsbury's house, where he was then speaking against the King, saying, that he was altogether unjust, and not fit to reign, and he wonder'd he did not take example by his father before him, and did really believe that he was a Papist in his heart, and intended to introduce Popery. I was sometimes after with him and I told him one Haines had told me he had something to discover about the death of Sir Edmund-bury Godfrey and several other things, and my Lord desired to see him, and I brought Mr. Haines to his house, and he desired him that what he had to say he would put in writing, and he should have a pardon, and that if the King did deny it, as he dares not deny it, but if he does, we will rise upon him and force him?

Sir Fr. Withins. Had you any other discourse, at other times?

Ivey. Yes, I had other discourse but not to this purpose.

Sir Fr. Withins. Was you frequently with him?

Ivey. I was frequently with him; he desired at the time I was with him to bid Colledge to come to him, and I went and came again to Haines with instructions how to proceed, and I took his examination of him, and carry'd it to my Lord, and he desired it might be explain'd what he meant by the tall black-man, and, says he, if he does mean the King, he must explain himself, and speak of the King, or the Duke of York; or the rest, and if he does, we will take care of him as long as he lives, but unless he does, we will do nothing for him: and I was with him with my Lord Shaftsbury, and my Lord Shaftsbury did exclaim against the King.

Sir Fr. Withins. What words did he speak?

Ivey. He said he was altogether an unjust man and not fit to reign, and that he be-

lieved he was a Papist in his heart, and design'd to introduce Popery, and therefore they design'd to depose him, and set up another in his stead?

Sir Fr. Withins. Do you remember any discourse of Richard the Second, at that time?

Ivey. No, Sir. I do not remember any thing of it.

Bernard Dennis sworn.

Sir Fr. Withins. Pray tell the jury what discourse you had with the Earl of Shaftsbury at any time, and what it was.

B. Dennis. My Lord, I came upon a design to make clear the plot in general, as far as I have travell'd, as in Ireland, France, Spain, Maryland, Virginia and England, and upon that account I was brought before a Justice of Peace in Westminster, November last, this time twelvemonth, and examin'd before Justice Walcup, a Justice of the Peace, and from thence to the Committee of the House of Commons, of whom Colonel Birch (I believe he is here) was chairman, and gave in my evidence, and being called upon at the trial of the Earl Stafford, I was commended, as I suppose, to the Earl of Shaftsbury, and upon the account he sent me word of it, by William Hetherington, who was then very intimate with the Earl of Shaftsbury, to my knowledge; and William Hetherington came to me several times, and he precisely was my maintainer at that time, that is, to find me whatever I wanted, and provide me my lodging, and carry me to some place where accommodation might be more better for me. Upon this account one time the E. of Shaftsbury sent to me desiring that I would wait upon him at his own house. I came to him, and there in the gallery of his own house, walking very slowly, he told me what I gave in of the plot in general was very good and sufficient, but as to the Queen and the D. of York, that I should speak more home and po-

against them; at least, that I might be a corroboration to others in what they swore against them. This was all at that present time, that the Earl of Shaftsbury spake to me, and he desired me to go home to his lodgings. With that I went home, and within a month, it may be or thereabouts, he sent for me again, by the same William Hetherington, and William Hetherington told me, that the Earl of Shaftsbury would speak with me. So I came and waited upon his Lordship at his own house, and, says he, Mr. Dennis, I understand that you are a clergyman. Yes, my Lord, said I. And, says he, I would advise you to take a black gown, and I will prefer you to a benefice, till such time as this business is over; and, says he, at the end of this business I will not fail to prefer you to a better, and in the mean time I would advise you to take a black gown; and this was a little, as I remember, after the Parliament was dissolved at Oxford; and he sent a gentleman out of his own house along with me, to a Doctor of Divinity living hard by Lincoln's Inn Fields, Dr. Burnet by name, as I remember, and the gentleman acquainted the Doctor what I was, and about what occasion I came there; so the Doctor indeed discoursed with me very familiarly, and rendered thanks to the Earl for me into his conversation rather than another's. What discourse we had then was nothing to the matter, it was about matters of conscience, and religion. But Mr. Colledge that was the joiner here in town, and executed afterwards, being familiar with me brought me to one Mr. Ferguson a minister, as I suppose of the Presbyterian form, for he goes in their garb as near as I can tell, and Mr. Ferguson at our first meeting was in Richard's Coffee-house, in an upper room one pair of stairs, and in some company; and Colledge going to him brought him aside, and spake to him concerning me, and he came to me apart,

and discoursed with me; from whence he brought me to a bookseller's shop, and bought for me the articles of the church of England, and in all these discourses there was a hand, as Colledge told me, of the Earl of Shaftsbury, who did procure him and sent to Dr. Burnet to bring me that way. I do not deny neither, that I had an inclination before I left Ireland, and when I was in Spain, and when I was in France, for to become a Protestant, according to the laws and rules of the church of England. The force of what I have to say is this: The Earl of Shaftsbury one day after all these things were past, and after the Parliament were dissolved at Oxford, discoursing with me in his own house, Major Manley being in the same room then, who lives beyond Tower-hill, he asked me what was the present occasion I came to him there, and it was pretty early in the morning, and the Earl had a barber to trim him in his room. I told him my occasion was then, that I was something low in money, that I did a little want money at that time, and did not know to whom to speak for any thing but his Lordship, and said I came to tell you so. Well, said he, Mr. Dennis, I have appointed Mr. Rouse, John Rouse whom you know, for to give you and maintain you in money; go to him especially once a week, and he will give you money. And, said he, Mr. Dennis, what is the number of your name in the country as near as you can tell, how many are you? My Lord, said I, to tell you exactly what number they be of, I cannot at present, but within a little time, I may tell you. I believe really there may be upon the matter 3 or 400 able men of my name, in the county where I was born. Says the Earl of Shaftsbury, Mr. Dennis, I would very willingly have you to advise those of your name, and those of your friends to be in a readiness, whenever occasion shall serve, and to stand by, if occasion should be, for

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to assist the Commonwealth of England; for we do really intend to have England under a commonwealth and no crown; and says he, we intend to live as we see Holland does, that is, to have a commonwealth, and to have no supreme head, particular man, or King, nor owe obedience to a crown; and, says he, we will extirpate the King, and all his family as near as we can; and, Mr. Dennis, says he, I do admire that your nation should be such fools as they are, for it is very certain that King James, Queen Elizabeth, King Charles the First, says he, and the King that now is, does wrong you to very destruction; and, says he, if you had been under a commonwealth, the commonwealth would take more pity of your nation, and the gentry of your nation, than any do of them now, in this time wherein the King governs, and upon this I do count the Irish fools. This is all that I can say.

L. C. J. The King's council declare they will call no more witnesses, for they think they have called enough already, and there are several of them that do swear words that are treasonable in themselves, if you do desire to ask any of the witnesses any thing, you shall have them all called one by one.

Foreman. My Lord, we will walk up again, and consider what questions to ask, and come again presently.

Papillon. It seems they will call no more witnesses than these.

L. C. J. Not against the Earl of Shaftsbury, being you are charged only with that.

Papillon. It is so, my Lord, but we pray we may be satisfied upon the statute the indictment is grounded, because we may hear it read before we go up, because your Lordship speaks of two different statutes, the 25th of Edward, and you mention the statute of the 13th of this King; your Lordship in your discourse to the jury

mentioned them both, we pray your Lordship to acquaint us upon what statute it is grounded, whether upon both or one of them.

L. C. J. Look ye, Gentlemen, this is grounded upon the statute of this King, though there is enough to find an indictment of treason upon the statute of the 25th of Edward the Third. That which is treason within the statute of the 25th of Edward the Third, is treason within this statute, so this is the more copious statute; for as I told you before, this statute has enlarged that of Edward the Third in a great many particulars; and therefore, look you, gentlemen, always consider this, when one statute contains the matter of another, and enlarges it, the indictment is always upon the last statute, that being the more copious statute; but you are to consider both.

L. C. J. North. The indictment is *contra formam statuti*, and it being *contra formam statuti*, it may be understood, *statutorum* or *statuti*, so that all statutes that may be the foundation of this indictment you may go upon.

Jury. We desire to know whether any of these witnesses stand indicted or no.

L. C. J. Look ye, Gentlemen, don't talk of this, but consider with yourselves, an examination of proofs concerning the credibility of the witnesses is not properly before you at this time; for I must tell you, and inform you as to that, you are not to examine properly here concerning the credibility of the witnesses, that is not to be proved or controverted here before you, that is matter upon a trial by the petty jury, for there the King will be heard for to defend the credit of his witnesses, if there be any thing that can be objected against them; it is proper for the prisoner to do that, you are only to see whether the statute be satisfied, in having matter that is treasonable, and having it witnessed by two men, by two witnesses, who are intended
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prima facie credible, unless you of your own knowledge know the contrary; for otherwise, you must consider what a disadvantage this would be in all such cases, if the credibility of the witnesses should be examined before the Grand Jury, where the King is not present, nor in a possibility of defending the credit of his witnesses; the prisoner or the party indicted is not here; that is a proper objection when he comes upon his trial; for all men are intended credible, till there are objections against them, and till their credits come to be examined on one side and the other.

Papillon. My Lord, if your Lordship thinks good, I will beg this, I desire your Lordship's pardon, whether your Lordship doth not think that we are within the compass of our own understanding and consciences to give our judgment?

L. C. J. Your own understandings and consciences, yes; but look ye, Gentlemen.

Papillon. If we are not left to consider the credibility of the witnesses: we cannot satisfy our consciences.

L. C. J. Look ye, Gentlemen, you are to go according to the evidence of the witnesses; you are to consider of the case according to the things alledged and proved, unless you know any thing yourselves: but if any of you know any thing of your own knowledge, that you ought to take into consideration, no doubt of it.

Jury. Very well, my Lord.

L. C. J. The Grand Jury are to hear nothing, but the evidence against the prisoner; therefore for you to enter into proofs or expect any here, concerning the credit of the witnesses, it is impossible for you to do justice at that rate.

The jury withdrew, and the court adjourned till three o'clock.

L. C. J. Let the witnesses be brought in one by one.

Foreman. We will first ask a question of Mr. Gwyn.

Mr. Gwyn.

Foreman. Who put up the papers?

Gwyn. I put up the papers myself.

Foreman. Who went in with you?

Gwyn. None but my Lord's servants, I think, were there: but I put up the papers myself.

Foreman. Pray, Sir, whose hand-writing is that paper of?

Gwyn. Indeed, Sir, I can't tell.

Foreman. How did it come into my Lord Shaftsbury's closet?

Gwyn. My Lord, this is a strange question. Indeed, Sir, I can't tell; all the papers that I found in that closet I put into that bag.

L. C. J. To satisfy the jury, was the paper in the closet before you came there?

Gwyn. My Lord, it was certainly there, for there I found it. I don't know the particular paper, but all the papers in that bag were there.

L. C. J. From whom had you the key?

Gwyn. From my Lord Shaftsbury.

Foreman. Don't you know, Sir, there was a discourse in the Parliament of an association?

Gwyn. Sir, I was not of the last Parliament. Sir, I know nothing of it.

Foreman. You have not heard then, that there was such a thing in Parliament concerning an association?

Gwyn. I have heard of an association talked of.

Foreman. Mr. Secretary, I would ask you some questions: if you did not know of a debate in Parliament of an association?

Secretary. I was not present at the debate; but there was a talk in town of an association.

Foreman. Did not you hear of it in Parliament?

Secretary. Indeed there was an answer to a message from the House of Commons that had

had something in it that did strongly imply an association; but this particular association I do not remember to have heard proposed.

Foreman. Don't you remember in the House of Commons, Sir, it was read upon occasion of that bill?

Secretary. I heard such a thing spoke of; but at the reading of it I was not present, to the best of my remembrance.

Foreman. What date, Sir, was the warrant for my Lord Shaftsbury's commitment?

Secretary. I refer myself to the warrant, for that I don't know the date.

L. C. J. Mr. Secretary, you must speak about the time that it was.

Secretary. Sir, I was the man that had the honour to sign that warrant by which the Serjeant at Arms did apprehend my Lord Shaftsbury, but what day of the month I do not remember; and therefore I refer myself, if you please, to the warrant, and to the Serjeant at Arms.

Foreman. What month was it?

Secretary. Sir.

Foreman. About what month?

Secretary. July.

Foreman. The beginning of July?

Secretary. Sir, I do not remember the day precisely; for I did not foresee that question would be asked me; but I refer myself to the warrant, and that is beyond all doubt.

Foreman. I suppose all these witnesses that are examined, were examined before the committee.

Secretary. Sir, They were examined, and I was present at the examination.

Foreman. All of them?

Secretary. I don't know whether all of them; but I am sure I was at the examination of several of them.

Foreman. How many, Sir?

Secretary. I can't tell truly how many.

Foreman. Call Mr. Booth.

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Officer. He is not here, the tipstaff has him somewhere.

Foreman. Is that witness a prisoner?

L. C. J. Booth is a prisoner.

Foreman. Then call Mr. Tuberville.

Papillon. Is Mr. Tuberville there?

Officer. Here is Mr. Booth come now.

Godfrey. Put Tuberville out again.

Foreman. Mr. Booth, you told me of a discourse that past between the Lord Shaftsbury and yourself, we desire to know where it was, and when.

Booth. It was in Thanet-House, Sir, where he lived, about a week or ten days before the Parliament sat at Oxford.

Foreman. The precise time.

Booth. I cannot be more precise.

Foreman. Who introduced you?

Booth. I think one Mr. Wilson led me into the chamber.

Foreman. Who was present when the discourse was?

Booth. None but he and I, Sir.

L. C. J. If we have these noises, we will have every one of you put out of court.

Att. Gen. Richardson, Richardson, pray turn them all out; they are brought in on purpose.

Booth. It was not the first, second, nor third time that I had waited upon the Lord of Shaftsbury.

Foreman. In what room was it that my Lord spake those words to you?

Booth. It was in the room he usually sets in, on the left hand as we came out of the long gallery, I think we passed through a room before it, wainscotted about, as I remember, and hung. I have been in that room with him four or five times, I am sure.

Foreman. After this discourse with you, how long was it before you spake of it to any body else?

Booth. Truly I think I did not publish this discourse that my Lord and I had,

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from.

from the time it was, till within this seven or eight weeks.

Foreman. You were never examined before then as a witness?

Booth. No, Sir, I never was, nor nobody will pretend it, I suppose.

Foreman. To whom, Sir, did you give your first information?

Booth. Sir, I sent my first information in writing to the Lords in the council.

Foreman. By whose hand?

Booth. By the hand of Walter Banes.

Foreman. You had several discourses with him; had you easy admission, or was it with difficulty you came into his company?

Booth. I was admitted by the influence of Captain Wilkinson at first, and ever after went with him, and had easy admittance and familiarity with him.

Foreman. Was he with you every time?

Booth. No, not every time; he was not this time with me.

Foreman. Did he talk to this purpose every time?

Booth. Something to this purpose he did talk every time, but not so fully; for I was first acquainted with this business of Oxford by Captain Wilkinson, and I had a great desire to understand it from my Lord's own mouth, because I would be satisfied in my Lord's interest as well as his conduct.

Foreman. Pray, Sir, what education have you had?

Booth. I have had the education of a gentleman, an academical education.

Foreman. Were you ever in orders?

Booth. Yes.

Foreman. Do you own yourself to be in orders still?

Booth. How do you mean to be in orders? I tell you I was in orders; but I am not now beneficed.

Foreman. Do you officiate as a Minister?

Booth. No.

Foreman. Were you ever an Attorney's Clerk?

Booth. Never.

Foreman. Or a Justice's Clerk?

Booth. Never; nor to no mortal.

Foreman. Were you ever indicted for any felony?

Booth. No.

L. C. J. That is a question not to be asked by any juryman of any witness whatsoever: no man is bound to discover any thing of that nature that is criminal, concerning himself.

Foreman. If he be pardoned, my Lord, he may.

L. C. J. Pardoned, or not pardoned, he is not bound to accuse himself, nor to fix a scandal on himself.

Booth. No, my Lord, *Nemo tenetur se ipsum prodere.*

L. C. J. Sir, we must not suffer such questions; I will tell you the reason: it is proper for a prisoner that stands upon his justification to object it, but then the prisoner must prove it: it lies upon him to prove it.

Papillon. Mr. Booth, you told us of fifty men that were listed under Captain Wilkinson, do you know any more of them?

Booth. I never directly conversed with any other.

Papillon. Did you know any more of them?

Booth. No, not directly I did not, but only by Captain Wilkinson's information.

Papillon. How many stories was that room where you talked with my Lord?

Booth. One pair of stairs, as I remember.

Godfrey. Was it the right hand as you came in?

Booth. I think so.

Godfrey. Was it the right hand or the left?

Booth. I went into the long gallery first, and stayed there about a quarter, or half an hour;

hour; and I remember very well I looked upon some maps that were there, to divert myself a while; and when I was called in, went out of the gallery on the left hand, and went through another room before I came into my Lord's room.

Foreman. Did you never hear my Lord speak treason in any house but his own?

Booth. I never had occasion to hear this discourse from my Lord, but in his own house; I never waited upon him in any other house.

Foreman. Was you never desired to be a witness against my Lord Shaftsbury?

Booth. Not till I intimated something of it.

Foreman. Who was that to?

Booth. That was to Mr. Banes; I told you before so.

Foreman. And what then?

Booth. When he told me of this business with the Yorkshire Attorney Brownrigg, I did say again, I did not know what my Lord had done, as to any thing of Irishmen, but I was sure there was something as to Englishmen, as to that purpose.

Foreman. Did he propose any reward, or any thing of that nature?

Booth. Not a farthing; for I think he had no commission to do it.

Foreman. Are you acquainted with one Callaghan and Downing, two Irishmen?

Booth. No.

Godfrey. Were you never in their company?

Booth. Not that I know of.

Godfrey. Did you ever hear their names?

Booth. I don't know that I have.

Foreman. Were you in their company lately?

Booth. Not as I know of. I do not remember either their names, or their persons, nor do I know them from other men.

Foreman. Do you know one Mr. Shelden?

Booth. No.

Foreman. Do you know one Mr. Marriot?

Booth. No, Sir: I have heard of one Marriot that did belong to my Lord Duke of Norfolk.

Foreman. When were you in his company?

Booth. Never that I know of.

Foreman. Has no body discoursed you from him?

Booth. No, nobody.

Foreman. Did you never hear of any witnesses he sent to his tenants?

Booth. I have heard from Banes about Brownrigg, about Irish witnesses.

Godfrey. Did you never hear of any Irish witnesses sent down by Mr. Marriot to the Isle of Ely?

L. C. J. We gave you all the liberty in the world, hoping you would ask pertinent questions, but these are trifles. I did not expect that any wise men would have asked these questions. Mr. Godfrey, was it to the purpose whether Mr. Marriot sent any Irish witnesses to his tenant, or no? What is that to this business?

Foreman. My Lord, I have it under the hand of the Clerk of the Council.

Booth. Pray, Sir, did any inform you that I had any correspondence with this man?

L. C. J. Nay, Sir, you must ask no questions.

Godfrey. Mr. Booth, do you go under no other name but Booth?

Booth. No, nor never did in my life.

Booth. My Lord, I cannot go in safety here for the tumult.

L. C. J. Let the officers secure him: Mr. Sheriff, look to him, that the man be secure and safe; I will require him at your hands else.

Sheriff Pilkington. What should I do?

L. C. J. Send

L. C. J. Send your officers to protect him, as becomes you, that he may be secured from the rabble here.

Mr. Turberville.

Foreman. Mr. Turberville, when you had this discourse with my Lord Shaftsbury, who was present with you?

Turberville. One of his servants; truly I cannot tell his name.

Foreman. Nobody else?

Turberville. I know the name of none of his servants, but Mr. Sheppard, I cannot remember any body else.

Foreman. Did he carry you up to my Lord?

Turberville. It was he, I think, told me I might go in: I was in the dining-room.

Foreman. What time was this?

Turberville. In the morning.

Foreman. What time was it when you had this discourse with my Lord Shaftsbury?

Turberville. It was in February.

Foreman. What time in February?

Turberville. About the beginning; I cannot tell exactly, to a day.

Foreman. How long was this before you communicated this to any body?

Turberville. It was about the fourth of July.

Foreman. Then you concealed it from February to July: Who did you communicate it to first of all?

Turberville. The first deposition I gave was to Mr. Secretary.

Foreman. Which Secretary?

Turberville. Secretary Jenkins.

Foreman. Pray, what room was it you had this discourse in?

Turberville. Sir, it was the room at the upper end of the dining-room; I think they call it the dining-room; at the upper end of the room, and turns on the left hand where he lay.

Foreman. Did you meet with nobody about the beginning of July, after my

Lord's commitment, and tell them when you were challenged, and told you were to be a witness against him, as you were alive you knew no such thing?

Att. Gen. My Lord, this is not to be allowed: This is private instructions which the jury are not to take.

Foreman. No, Sir, it is not private instructions. Did you not speak such words to William Herbert?

L. C. J. Have you had any information concerning this to Mr. Herbert.

Foreman. My Lord, I have a long time ago. My Lord, such a person did tell me so and so, and set down the day; and he then said he was very angry with him for it.

L. C. J. Look ye, Gentlemen, what discourse you take up at random in every coffee-house? Is that fit to be brought in when treason is in question against the King's life? Are these coffee-house discourses, do you think, ground enough for you to cavel at persons, because you have heard this discourse in a coffee-house?

Foreman. My Lord, I never was in a coffee-house in my life with Mr. Herbert; but he declared this to me some months ago.

L. C. J. And you think this is ground enough for you against him?

Papillon. My Lord, we only ask this question, whether he hath not contradicted this, or said the contrary to any body else?

Turberville. I do not remember that ever I spake one word to Mr. Herbert in my life; and I can give you one reason: For I was discarded by all people of my Lord's interest at that time; and if I had given under my hand that I had known nothing against him, I believe I might have been in their favour as much as before.

Papillon. Were not you one that petitioned to the Common-council in London?

Turberville,

Turberville. I did, Sir.

Papillon. And did not you declare then that you were tempted to witness against your conscience?

Turberville. I believe I never read the petition: I was drawn by the order of Mr. Colledge, by a man that lives about Guildhall; by a scrivener about Guildhall; and I signed that petition, but never read it, nor knew what was in it.

L. C. J. Mr. Richardson, any you officers, watch by those men that make a noise, and bring me in one to make an example.

Turberville. My Lord, I go in danger of my life, for the people threaten to stone me to death, and I cannot go safe to my lodging.

Papillon. What was your design in signing that petition? what did you look for?

Turberville. The design was that the city should take care of us.

Papillon. Were you in a poor condition?

Turberville. Truly I was not very poor, though I was not over full of money.

Papillon. It is a strange thing that you should petition for relief, if you were not in want.

Turberville. We were told by some members of the House of Commons, that there was a vote in the House of Commons ready to pass, that the city should advance money for the support of the witnesses, and that we would petition that they would answer the design of the Parliament.

Papillon. What members were they?

Turberville. It was a member of the House of Commons that told me so, I will assure you, two of them.

Papillon. Did never any body move you, or desire you to be a witness in this case against my Lord Shaftsbury?

Turberville. Nobody in my life. When I came to speak the truth of what I knew, I did it voluntarily.

Papillon. You did it voluntarily?

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Turberville. I did, I will assure you.

Papillon. Do you know any thing more than what you have said here?

Turberville. No not one tittle.

Papillon. Mr. Turberville, I desire to be satisfied in one thing, whether my Lord Shaftsbury was committed before or after your information?

Turberville. Truly, Sir, I cannot tell positively, as to that point; but I believe it was before; I cannot tell.

Papillon. Did you hear my Lord speak these words in any other room or place?

Turberville. No, indeed, I did not.

Papillon. It was about the fourth of July, you say, your depositions were taken?

Turberville. About that time, I suppose the fourth of July—I hope your Lordship will take care that we be not knocked on the head.

L. C. J. That we give in charge to Mr. Sheriff; and see you do take care of the King's witnesses at your peril. It is a reflection, not only upon the government of the city to suffer these disorders, but upon the whole kingdom: therefore, Mr. Sheriff, look the witnesses come by no hurt.

Mr. John Smith.

Papillon. Mr. Smith, the jury ask you a question, whether or no you did not use to go by the name of Barry?

Smith. Sir, what names I have gone by is not pertinent to this purpose; I tell you I have gone by several names, as all Popish Priests do.

Papillon. Did you never go by the name of Barry?

Smith. It may be I might: I have gone by several names, as all Popish Priests do.

L. C. J. Did you ever go by the name of Barry?

Smith. I did, my Lord; it is usual for Popish Priests so to do.

Papillon. What religion are you of, Mr. Smith.

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Smith.

Smith. I am a Protestant, Sir.

Papillon. How long have you been a Protestant?

Smith. Many years.

Papillon. When were you first converted?

Smith. First converted?

Papillon. Ay, to the Protestant religion: you say you have been one many years?

Smith. I have been a Protestant, and was perverted to the Popish religion, and afterwards became a Protestant again.

L. C. J. Bring in one of those men that make the noise. Cannot you bring in one of them?

Papillon. When did you receive the sacrament?

Smith. I believe not above three months ago, as the Rector of Bow-Church will inform you: I have it under the church-wardens hands in other places in London.

Papillon. Have you been desired to be a witness, or did you do it voluntarily?

Smith. Never desired, I declare it; I did it voluntarily myself.

Papillon. When did you give in your evidence first?

Smith. Truly I cannot exactly tell when I gave it in; I did not keep an account of it.

Papillon. What month?

Smith. I cannot tell.

Papillon. Was it before my Lord was committed, or after?

Smith. I believe it might be a little after. Whether it was before or after, I cannot exactly tell.

Papillon. To whom did you give your information?

Smith. My Lord, they commanded the people to stone us to death.

L. C. J. Who did?

Smith. Several persons, and when we were at the tavern, Dr. Otes's man came out and gave the rabble a bottle of wine, and bid them knock us down.

L. C. J. Do you know what the man's name is?

Otes. I know nothing of it, my Lord.

L. C. J. What is your man's name?

Otes. I keep half a dozen men, my Lord.

L. C. J. I hope you keep no men to affront the King's witnesses.

Otes. No, my Lord, it is a mistake, I know nothing of it, we went thither to refresh ourselves.

Papillon. Mr. Smith, who did you give your information to?

Smith. What information?

Papillon. The first information.

Smith. My Lord, am I to answer to these questions?

L. C. J. Ay, answer them, tell them.

Smith. My Lord, the information, I gave in to Secretary Jenkins, but I gave notice long before of what I intended to do to other persons.

Papillon. When did you hear these words, speak to the time exactly?

Smith. Which words do you ask?

Papillon. Those you mentioned even now.

Smith. Sir, if you please, I know you take all in short hand, if you ask me what words, I will tell you, for if I do not express myself in the same words as before, you will take hold of me.

L. C. J. I will tell you this, this may be an ill question, for he told you, he had discoursed my Lord Shaftsbury at a great many times, and that at sometimes he said these words, at other times other words, and for you to catch him upon a question, it doth not shew a fair inclination.

Papillon. My Lord, under your Lordship's favour, we only desire to discover the truth, we are not for catches.

L. C. J. Ask him then which of the words you would have him declare the time of, and he will tell you.

Papillon.

Papillon. Let him speak his own words, it was about the time when Hetherington went thither.

Smith. Truly I will answer that as punctually as I can, the month or day I cannot well tell, but the person that came for me was Major Manly; and he came to Bethel's club, what time that was, I cannot say, but if you please to inform yourselves of those gentlemen that I name, I believe they will tell you Mr. Bethel was there present, and knew very well I went to my Lord Shaftsbury that night, and returned to the club again.

Godfrey. Was it in the evening or the morning?

Smith. Mr. Godfrey, clubs are usually at night I suppose, you know that was.

Papillon. Where did you see my Lord Shaftsbury?

Smith. It was in his dining-room.

Papillon. Did you hear these words in any other place, or at any other time, or any treasonable words against the King?

L. C. J. Look you, Gentlemen, he told you of several other words at several other times.

Papillon. But he said all at his house, my Lord.

L. C. J. Ay, but at several times.

Smith. I know Mr. Attorney, what the gentlemen would be at very well.

L. C. J. Answer them whether you did hear him speak any words that you conceive treasonable at any other time?

Smith. I did not indeed.

Papillon. In another place?

Smith. I do say I did not.

Papillon. Did you petition to the Common-council?

Smith. No, Sir, I never did.

Papillon. Are you an Englishman or an Irishman?

Smith. That's no matter, no, more than if I were a Frenchman or a Dutchman.

L. G. J. Give them an account whether you are an Englishman or an Irishman.

Smith. My Lord, I beg your Lordship's pardon for that, if I were an Irishman, whether thereupon my evidence would be prejudiced.

L. C. J. Look you, Mr. Smith, I do hope the Gentlemen of the Jury have more discretion among them all, than to think that an Irishman is not a good witness, I hope they are not such persons.

Smith. My Lord, if you please whilst I was in the city amongst them, I never petitioned to the city, I never had a farthing from them, nor ever spake to any for it, I never had occasion for it, but if I had, it is probable I have enough in England, and other places, without being beholden to your Common-council.

L. C. J. Will you ask him any more questions.

Jury. No, no.

Papillon. Is Mr. Smith gone? I would ask him one word, we would fain know what allowance you have, or what you receive, if you have any allowance, from any body?

Smith. From whom?

Papillon. Nay, I know not from whom: I ask whether you have any from any body?

L. C. J. Look ye, Gentlemen, is that a question that is pertinent? I wonder you will go to such questions: we allowed you to ask questions yourselves, because we look upon you as men of reason.

Papillon. My Lord, I do not know but it may be a proper question to ask him if he have any allowance from any man upon this account.

L. C. J. Upon what account?

Papillon. Upon this account, if he says he has none 'tis an answer.

L. C. J. Do you intend your question, whether he is bribed to give evidence, if you mean so, speak plain.

Papillon. We ask if he have allowance?

Smith.

Smith. You don't ask me how the 6 or 700l. was made up.

L. C. J. You that are upon your oaths should have a care what you do.

Bryan Haynes.

Papillon. Mr. Haynes, when did you give in your information upon this matter?

Haynes. Against the Earl of Shaftsbury, Sir?

Papillon. Ay.

Haynes. The day that I was taken by the messenger.

Papillon. That was before my Lord was committed, was it not?

Haynes. Yes, Sir, it was before my Lord was committed.

Papillon. Did you ever make any other information to a Justice of the Peace?

Haynes. Not of my Lord of Shaftsbury.

Papillon. Nor touching this matter?

Haynes. No, not any information upon oath, I may have discoursed with a Justice of the Peace.

Papillon. Did not you give in an information of a design against the Earl of Shaftsbury.

Haynes. To none but to Secretary Jenkins.

Papillon. You understand the question, whether you did give no information of a design against my Lord Shaftsbury to some Justice of the Peace?

Haynes. No, no, to none but Mr. Secretary Jenkins.

L. C. J. You do not observe his question, did you ever give to any Justice any information of a design against my Lord Shaftsbury.

Haynes. Yes, my Lord, I did, to Sir George Treby, I made affidavit before him.

Papillon. When was that?

Haynes. I think it was in March last.

Papillon. What was that design against my Lord Shaftsbury?

Haynes. The design was what Mr. Fitzgerald told me, he told me he gave under his hand to the King, that the Earl of Shaftsbury did resolve to set the crown upon his own head, or otherwise to turn the kingdom into a commonwealth.

Papillon. Fitz-Gerald told you this, and so you made affidavit of it?

Haynes. Yes, before Sir George Treby.

Papillon. What time?

Haynes. It was before the Parliament met at Oxford.

Papillon. So you say the words were; when were the words spoken that you mentioned?

Haynes. The words against my Lord?

Papillon. Ay.

Haynes. He spake them to me a little before I made affidavit; I cannot tell positively the time.

Papillon. That was before his commitment.

Haynes. Yes, yes, my Lord was committed in June last, this affidavit was made in March last, before the Recorder of London.

L. C. J. North. When you ask him about the information of the design against my Lord Shaftsbury, he says that was in March last; and when you ask him about the evidence he gives now, that was the same day he was apprehended by the messenger.

Papillon. About June you say it was, that you say you gave in the information against my Lord Shaftsbury.

Haynes. The information I made against the Lord Shaftsbury was in June last, the 28th as I take it, of June last.

Papillon. Where was it you had this discourse?

Haynes. I had several conferences with my Lord.

Papillon. Did he every time say the same?

Haynes.

Haynes. The last time I spake with him was in Ironmonger-Lane, for Mr. Whitaker told me he would speak with me, and he would fain have me explain myself, what I did mean by the tall man I mentioned in the narrative; and I went to the house, and they told me he was there, and I sent up a note, and he desired me to come up; but I sent word I did not care to come up, because I would not be known; and so he sent me word to meet him after dinner; and when I came, my name is Haynes, my Lord, said I, and I led his Lordship by the hand and went in there. I had, I believe, a whole hour's discourse with him; and pray, my Lord, said I, among other questions, what religion is the King of? Truly, says he, Mr. Haynes, he hath no more religion than an horse; for, saith he, they say, Sir, he was inclined to Popery when he came first to England, says he, he had a tincture of Popery, and was much inclined that way, but since he was degenerated from all the principles of Christianity, for he is just like a perfect beast.

Papillon. This you say was in Ironmonger-lane.

Haynes. Ay, Sir, at a pastry-cook's shop.

Papillon. What time was it?

Haynes. After dinner in the afternoon.

Papillon. In June, or when?

Haynes. I cannot tell what time positively, it was about the time of the trial of Fitz-Harris.

Pap. Was it the same time he spake about the Duke of Buckingham?

Haynes. No, no.

Pap. When was that?

Haynes. That was when I was with him at his own house, and desired him not to expose me.

Pap. What time?

Haynes. I cannot tell, Sir, for I never thought I should be called to an account for it, and I cannot keep an almanack in

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my head; and I desired them not to expose me to the King's fury, for I heard the King was displeased with me. No, says he, you are mistaken, this is the best opportunity we can have, and if he will not give you a pardon, we will raise the whole kingdom against him in arms; and then he makes himself the master and author of the plot, and consequently he must expect to be ruined, unless he grant you a pardon.

Pa. Did you ever hear any other words than what you have now testified?

Haynes. Yes, Sir, for I discoursed with him in Ironmonger-lane a great while, and told him, that our only and best way to have our ends of the King, was to raise a rebellion in Ireland, and that I had relations and friends, and could get discontented persons enough, and his Lordship would do the work here.

Pa. What, did you propound a rebellion in Ireland?

Haynes. I offered to go beyond sea, and that now was the best time to raise a rebellion in Ireland; and he said that was not the best way, for they had other means to take, and so the discourse was waved.

Pa. And is that all?

Haynes. That is all I remember now.

Pa. Do you know of any other place or time?

Haynes. I was with him at his house.

Pa. Were you ever a witness for my Lady Windham, or against her?

Mac. No, Sir, but she arrested me because I said I lay with her.

John Macnamarra.

Pa. Mr. Macnamarra, when was it you had this discourse with my Lord Shaftsbury, what is the time, as near as you remember?

Mac. In March and April last, Sir.

Pa. Twice then do you speak of?

Mac. Yes, Sir.

Pa. Which is that that was in April?

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Mac.

Mac. That was the last, the last discourse was in April.

Pa. To what purpose was that?

Mac. My Lord said that the King deserved to be deposed as much as King Richard the Second did.

Pa. In April you say.

Mac. In April.

Pa. When did you give information of this?

Mac. I cannot exactly tell, Sir.

Pa. Repeat what you said.

Mac. That the King deserved to be deposed as much as King Richard the Second, and that he took the Duchess of Mazarine's advice in every particular, which was the worst of womankind.

Pa. What time in April was this?

Mac. It was in the beginning of April.

Pa. Where?

Mac. In his own house.

La. Who was present?

Mac. There was Mr. Ivey by.

Pa. When did you make information of this?

Mac. I cannot tell, it was a good while ago.

Pa. Was it before his commitment?

Mac. Yes, Sir, it was.

Pa. To whom did you give information?

Mac. To the Secretary of State, Sir.

Pa. Which of them?

Mac. Mr. Secretary Jenkins, Sir.

Pa. Did not you petition the common-council, Sir, for relief?

Mac. Yes, Sir, I signed a petition that was drawn up, but I did not see it till it was brought to me to sign.

Pa. Did you read it.

Mac. No. I never read it neither.

Pa. Nor don't know what is in it?

Mac. No, nor don't know the contents of it.

Pa. My Lord, in that petition they say, they were tempted to swear against their

consciences, and that some of the witnesses had made shipwreck of their consciences; we ask them now, and they say, they do not know what was in the petition: if we should ask them who tempted them, and who those witnesses were, that made shipwreck of their consciences, it would signify nothing; for since they do not know what was in the petition, it is in vain to ask them any more.

Mac. For my part, my Lord, I never saw it till it was brought to me to be signed, and do not know the contents of it; but I heard Mr. Colledge that was executed at Oxford, was concerned in promoting the petition, by my Lord Shaftsbury's advice.

Dennis Macnamarra.

Pa. Dennis Macnamarra, tell us how you were introduced to my Lord Shaftsbury, when you had this discourse?

D. Mac. By my brother, Sir.

Pa. What, he that was here last?

Mac. Yes, Sir.

Pa. He introduced you?

Mac. Yes, Sir.

Pa. When was it?

Mac. It was in March last, the latter end of March, or beginning of April.

Pa. Cannot you tell which of the months?

Mac. No, I cannot be positive in it.

Pa. Who was by?

Mac. There was Mr. Ivey.

Pa. No body but Mr. Ivey?

Mac. No body but Mr. Ivey and my brother.

Pa. Where was it?

Mac. It was in his own dining-room.

Pa. Were none of his servants in the room?

Mac. Not that I know of.

Pa. Are you sure none of his servants were there?

Mac. Not that I know of.

Pa. Did you hear any thing else, at any other time?

Mac.

Mac. No.

Pap. Nor in any other place?

Mac. No.

Pap. When did you give in this information?

Mac. I gave it in a good while ago, Sir, I cannot be positive.

Pap. Was it before my Lord was committed?

Mac. Yes, a great while.

Pap. To whom did you give it?

Mac. I gave it to the Secretary of State.

Jury. Cannot you remember how long it was before?

Mac. No. I cannot at the present.

Pap. Which of the Secretaries?

Mac. Secretary Jenkins.

Pap. My Lord, I only propose, whether we may not ask whether he have not a pardon, for it would be a satisfaction to us, for some reason.

L. C. J. North. Look you here, Gentlemen, when the prisoner makes exceptions to the witnesses, then it is proper, but here are no exceptions to the witnesses.

Pap. My Lord, we make no exceptions, but we must satisfy our consciences, that we must do, and that is very much, as we find the credibility of the witnesses.

L. C. J. North. Gentlemen, what do you mean, that he should have a pardon for?

Pap. For crimes.

North. You must not ask him to accuse himself.

Pap. If he hath a pardon he is in *statu quo*; suppose, my Lord, some of them have been guilty of poisoning, some of felony, some of robbing on the highway, we do but ask them if they be pardoned?

L. C. J. North. A man must not be impeached, but where he may answer for it.

Pap. My Lord, if you do not give us leave, we must forbear then.

L. C. J. North. I do not think it proper to ask.

Edward Ivey.

Pap. The discourse that you had with my Lord Shaftsbury, when was it, at what time?

Ivey. It was a little after the sitting of the Parliament at Oxford.

Pap. Was it more times than one?

Ivey. Yes, Sir, several times.

Pap. All the same discourse?

Ivey. No, not the same discourse.

Pap. The words that you spoke of, when was that?

Ivey. That was after the sitting of the Parliament at Oxford.

Pap. About what time was it?

Ivey. It was about the latter end of March or beginning of April.

Pap. When did you make information of this?

Ivey. I cannot be positive in that neither.

Pap. Before my Lord's commitment, or after?

Ivey. A while before.

Pap. To whom did you give it?

Ivey. To the Secretary of State.

Foreman. Who was present when my Lord Shaftsbury spake those words?

Ivey. Both the Macnamarra's, as I remember.

Fore. Who else?

Ivey. Truly, I do not remember any else privy to our discourse, neither am I certain, that both the Macnamarra's were there, one of them was there I am sure of it.

Fore. What was the reason you concealed this information so long, had you no inducement to make it at that time, how came you to do it then and not before? What was the reason, you say it was the latter end of April and May, my Lord was not committed for a good while after, here was two months time.

Ivey. I am not certain how long a time it was before, but I made it as soon as I could.

Fore.

Fore. I ask you, whether you know any thing either of words, or treasonable actions, or any thing of my Lord Shaftsbury, spoken or acted at any other time or place?

Ivey. No, I have declared what I know, as to the particulars.

Bernard Dennis.

Papillon. Mr. Dennis, in the morning you told me something about the discourse you had with my Lord of Shaftsbury, tell me when it was?

Dennis. It was in April, four or five days after the Parliament was dissolved at Oxford.

Papillon. In the beginning?

Dennis. In March, after the Parliament was dissolved at Oxford,

Papillon. It was in March, and where?

Dennis. In his own house, here in this town, four or five days after the Parliament was dissolved at Oxford, immediately after he came home, I do not think he was at home three days before.

Papillon. Who was present with you then?

Dennis. There was in the room Mr. Sheppard his gentleman.

Papillon. Who else?

Dennis. Some of his servants, his pages I suppose, but whether they did hear this or no, I cannot tell.

Papillon. Did my Lord whisper it, or speak out?

Dennis. My Lord is not a man of an high voice, but of mediocrite voice.

Papillon. Did he whisper it in your ear.

Dennis. No, I was just by him.

Papillon. Who was in the room besides?

Dennis. No body, only his servants.

Papillon. When did you make this information.

Dennis. I made it in the month of June?

Papillon. In the month of June?

Dennis. Yes, Sir.

Papillon. Before my Lord was committed or after?

Dennis. Before

Papillon. Who did you make it to?

Dennis. I made my information to the secretary of state.

Papillon. Which of them;

Dennis. Secretary Jenkins.

Papillon. Why did you conceal it so long?

Dennis. Because I was in the city so long.

Papillon. Did you ever go about to muster your 400 men you had in Ireland, I ask you whether you did or no?

Dennis. Upon my word I did advise some of them to be ready.

Papillon. And did you provide them with arms?

Den. Not I, Sir, I was not able to do it.

Pap. What religion are you of?

Den. I am a Protestant.

Pap. How long have you been a Protestant?

Den. I have been a Protestant since February last. And this I must confess, that when I was in Spain and France, my resolution was to be a Protestant.

Godfrey. Mr. Dennis, pray who was in the room when you were there?

Den. The Earl of Shaftsbury, Sir.

Godfrey. Who else?

Den. Mr. Sheppard.

Godfrey. Who else?

Den. I cannot name them.

L. C. J. Mr. Godfrey, when another man asks a question, you should consider what is said and not ask the same question over and over again.

Pap. In what place in his house?

Den. In his own chamber, in the great chamber, I do not know whether you call it the hall or the parlour.

Pap. Was it above stairs?

Den. Yes, it was above stairs, my Lord does not use to speak with any below stairs.

Pap. Is this all that you know, have you heard my Lord say any treasonable words in any other place, or at any other time?

Den.

Den. In the long gallery, in his own house, at another time.

Pap. Why did not you say so before?

Den. I did say so before, in the long gallery he told me he would have a commonwealth in England, and extirpate the crown of England, and the King of England.

Pap. Is that all, speak all your knowledge.

Den. He said we should all Irish-men conform ourselves to a commonwealth, and by that we should get our estates again.

Pap. I ask you if this is all you have to say?

L. C. J. Do you remember any more?

Pap. More than you said in the morning?

Den. He said he would extirpate the King, and make England a commonwealth, and that we were fools and silly folks that did not comply ourselves to their factious party, and that we should get our estates, and that he would get me a black gown and a benefice, in the mean time; and when all things were done he would prefer me to a better, and not only myself, but all that were of my name, and would stick to me.

Pap. Is this all?

Den. This is all.

Pap. Then you have nothing more?

Den. I never spake to him but in his own house.

Pap. All your kindred are Papists, are not they?

Den. No, Sir, I cannot say so, but most of them are.

L. C. J. Who can say that, that question no body can answer.

L. C. J. Look ye, gentlemen, now you have asked these questions, you had best go and consider what evidence is delivered, and weigh well all those things that have been said to you, and you must consider your duty, you are to enquire here, whether it be fitting for the King to call my

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Lord Shaftsbury to question upon this account of treasonable words.

Pap. My Lord, we desire before we go, that either the law may be read, or we may have the statute-book up with us.

L. C. J. The statute book was never denied, but you shall have the law read here, first the statute of the 25th of Ed. the Third, and then this last statute.

L. C. J. North. I would say one thing, because I observed that some of you asked the question, whether the Parliament did not debate about an association; whether it related to that paper or no, I am not certain, I hope you will consider that paper well, for my part I must needs say, for myself, I heard of it, but I never heard it read before, and never heard the contents of it, but it seems to me to show what those officers were to do, for the ends of this association, and one of those ends as I remember (gentlemen, I refer you to the paper, and hope you will consider it, you are men of understanding) I thought that one of those ends was to destroy the mercenary forces in and about the cities of London and Westminster, and that the government was to be by the major part of the members of Parliament, in the sitting of Parliament, not with the King, but the major part of the members of Parliament. Gentlemen, I may mistake, for I profess I speak only out of memory; but it seems to me to be of great consequence, and there is great matter to be presumed upon it, it being found under lock and key in his study: But I suppose my Lord Shaftsbury may give an account of it, but there is great presumption upon it, it doth not import to be an association by Act of Parliament.

Att. Gen. When the Parliament was prorogued or dissolved, then the major part of the members in each county engage themselves to follow their command and obey their order.

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L. C. J.

L. C. J. North. Gentlemen, I hope you will consider your oaths, and give all things their due weight.

L. C. J. Will you have the statute read?

Jury. We will read it above.

The Jury withdrew to consider the evidence, and returned the Bill Ignoramus, upon which the people fell a hallooing and shouting.

Att. Gen. My Lord, let it be recorded this hallooing and hooping in a court of Justice.

The Trial of FORD LORD GREY OF WERK, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones. Michaelmas-Term; Jovis 23. Nov. A. D. 1682.

The KING against FORD LORD GREY of WERK, and OTHERS.

THERE having been an information preferred against the Right Honourable Ford Lord Grey of Werk, and others, by his Majesty's Attorney General Sir Robert Sawyer, the first day of this Michaelmas term (a copy of which information follows) and the Lord Grey having then pleaded to it not Not guilty, and the other defendants the like afterward, and the King's Attorney joined issue upon it; Tuesday the 21st of November, was appointed for trial of this cause; but it was then adjourned to this day, because one of the witnesses for the King was not ready; but this day it came on about nine in the morning, at the King's-Bench-Bar, and held till two in the afternoon, [*Sir Francis Pemberton, C. J. Sir Thomas Jones, Sir William Dolben, and Sir Thomas Raymond.*] all the Judges of the said court being present.

First, proclamation was made for silence, and then for information, if any person could give any, concerning the misdemeanor and offence whereof the defendant,

stood impeached: Then the defendants being called, and appearing, were bid to look to their challenges, and the jury being all gentlemen of the county of Surrey, were called, challenged, and sworn in this order:

Cl. of Crown.

1. Sir Marmaduke Gresham, jur.
 2. Sir Edward Bromfield, jur.
 3. Sir Robert Knightley, jur.
- Sir John Thompson.

Serj. Jefferies. We challenge him for the King.

Holt. Then we challenge *toutz per avails*, unless the King shew his cause of challenge; for by the statute of 24 Ed. 1. the King cannot challenge without cause.

Serj. Jefferies. But by the course of practice, all the pannel must be called over before the King shew his cause.

Att. Gen. [*Sir Robert Sawyer.*] Before the party can have his challenge allowed, he must.

must shew his cause ; but they must go on with the pannel, in the King's case, to see if the jury be full without the persons challenged, and that is sufficient.

L. C. J. [*Sir Francis Pemberton.*] If they challenge any person for the King, they must shew cause in due time. For I take the course to be, that the King cannot challenge without cause, but he is not bound to shew his cause presently ; it is otherwise in the case of another person.

Serj. Jefferies. That hath always been the regular course.

Holt. Our challenging *toutz per availle*, doth set all the rest aside till cause be shewn.

L. C. J. The statute is, the King shall shew cause ; but when it comes in a case between the King and another party, that they both challenge, the other party shall shew cause first.

Holt. My Lord, we challenge *toutz per availle*.

L. C. J. You must shew a reason for it then.

Att. Gen. The King shall not be drawn to shew his cause, if there be enough in the pannel besides.

Williams. That is to say then, that the King may chuse whom he pleaseth against the statute.

Serj. Jefferies. No, Sir, we desire none but honest and indifferent gentlemen to try this cause.

L. C. J. The old challenge is taken away, by that statute, from the King, *quia non sunt boni pro Domino Rege*, and therefore if the King challenge any, he must shew cause, but it must be in his time, and not before you shew yours. Let him stand by a-while.

Cl. of Cr. John Sandys, Esq.

Serj. Jefferies. We challenge him for the King.

Holt. For what cause, Sir ?

Serj. Jefferies. We will tell you in good time.

Cl. of Cr. 4. Sigismund Stiddulph, Jur.
John Weston.

Weston. My Lord, I am no freeholder.

Holt. He challenges himself.

L. C. J. Well, he must be set aside.

JURY.

Cl. of Cr.

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|--------------------|---------------------|
| 5. Thomas Vincent | 10. John Halsey |
| 6. Philip Rawleigh | 11. Tho. Burroughs, |
| 7. Robert Gavel | and |
| 8. Edward Bray | 12. John Pettyward. |
| 9. Thomas Newton | |

Cl. of Cr. Gentlemen, you of the Jury that are sworn, hearken to your charge.

Surry, Jf. Sir Robert Sawyer, Knt. his Majesty's Attorney-General, has exhibited an information in this court, against the Right Honourable Ford Lord Grey of Werk ; Robert Charnock, late of the parish of St. Botolph Aldgate, London, Gent. Anne Charnock, wife of the said Robert Charnock ; David Jones, of the parish of St. Martin in the Fields, in the county of Middlesex, milliner ; Frances Jones, wife of the said David ; and Rebecca Jones, of the same, widow ; for that they (with divers other evil-disposed persons, to the said Attorney-General yet unknown) the 20th day of August, in the 34th year of the reign of our Sovereign Lord the King that now is, and divers other days and times, as well before as after, at the parish of Epfom, in the county of Surry, falsely, unlawfully, unjustly and wickedly, by unlawful and impure ways and means, conspiring, contriving, practising and intending the final ruin and destruction of the Lady Henrietta Berkeley, then a virgin unmarried, within the age of eighteen years, and one of the daughters of the Right Honourable Lord Grey

Earl of Berkeley (the said Lady Henrietta Berkeley, then and there being under the custody, government and education of the aforesaid Right Honourable George Earl of Berkeley her father) they the said Ford Lord Grey, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones, and divers other persons unknow, then and there, falsely, unlawfully and devilishly, to fulfil, perfect, and bring to effect, their most wicked, impious and devilish intentions aforesaid; the said Lady Henrietta Berkeley, to desert the aforesaid Right Honourable George Earl of Berkeley, father of the aforesaid Lady Henrietta; and to commit whoredom, fornication and adultery, and in whoredom, fornication and adultery to live with the aforesaid Ford Lord Grey (the said Ford Lord Grey, then and long before, and yet, being the husband of the Lady Mary, another daughter of the said Right Honourable George Earl of Berkeley, and sister of the said Lady Henrietta) against all laws, as well divine as human, impiously, wickedly, impurely and scandalously, to live and cohabit, did tempt, invite and solicit, and every of them, then and there, did tempt, invite and solicit. And that the aforesaid Ford Lord Grey, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones, and other persons unknown, with force and arms, &c. unlawfully, unjustly, and without the leave, and against the will of the aforesaid Right Honourable George Earl of Berkeley, in prosecution of their most wicked conspiracies aforesaid; the said Lady Henrietta Berkeley, then and there, about the hour of twelve in the night time, of the said 20th day of August, in the year aforesaid, at the aforesaid parish of Epfom in the county of Surry aforesaid, out of the dwelling-house of the said Right Honourable George Earl of Berkeley, there situate and being, and out of the custody and government of the said Earl of Berkley,

did take, carry and lead away. And the said Lady Henrietta Berkeley, from the said 20th day of August in the year aforesaid, and continually afterwards, unto the day of the exhibition of this information, at the parish of Epfom aforesaid, in the county of Surrey aforesaid, and in divers secret places there with the said Ford Lord Grey, unlawfully, wickedly, and scandalously to live, cohabit and remain, did procure and cause, and every of them did procure and cause, to the great displeasure of Almighty God, to the ruin and destruction of the said Lady Henrietta Berkely, to the grief and sorrow of all her friends, and to the evil and most pernicious example of all others in the like case offending; and against the peace of our said Sovereign Lord the King, his crown and dignity. To this information, the defendant, the Lord Grey, and the other defendants, have severally pleaded Not Guilty, and for their trial, have put themselves upon the country, and the King's Attorney likewise, which country you are: Your charge is to enquire whether the defendants, or any of them, are guilty of the offence and misdemeanor whereof they stand impeached by this information, or not guilty: If you find them or any of them guilty, you are to say so; if you find them, or any of them not guilty, you are to say so and no more, and hear your evidence.

For which evidence to come in, proclamation was made, and then Edward Smith, Esq. a Bencher of the Middle-Temple, opened the information.

Mr. *Smith*. May it please your Lordship, and Gentlemen, you of the Jury; Mr. Attorney General hath exhibited an information in this court, against Ford Lord Grey of Werk, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones, wherein is set forth, That the defendants, the 20th of August, in the 34th year of this King, at Epfom in
your

our county, did conspire the ruin and utter destruction of the Lady Henrietta Berkeley, daughter of the Right Honourable George Earl of Berkeley; and for the bringing about this conspiracy, they have seduced her to desert her father's house, though she be under the age of eighteen years, and under the custody and government of her father; and solicited her to commit whoredom and adultery with my Lord Grey, who was before married to the Lady Mary, another daughter of the Earl of Berkeley, and sister to the Lady Henrietta. That after they had thus inveigled her, they did upon the same 20th day of August, carry her away out of the house, without the Earl's licence, and against his will, to the intent she might live an ungodly and dishonourable life with my Lord Grey. And after they had thus carried her away, they obscured her in secret places, and shifted about from place to place, and continued this course of life ever since. And this the information says, is to the displeasure of Almighty God, the utter ruin of the young Lady, the grief and affliction of her friends, the evil example of all others, in the like case offending, and against the King's peace, his crown and dignity. To this all these derendants have pleaded Not Guilty; if we shall prove them or any of them guilty of any of the matters charged in this information, you shall do well to find them guilty.

Att. Gen. My Lord, and Gentlemen of the Jury, The course of our evidence will be this, That this unhappy gentleman, my Lord Grey, has for four years together, prosecuted an amour with this young Lady; and when it came to be detected (some little accident discovering somewhat of it) my Lady Berkeley did find there was some business of an extraordinary nature between them, and thereupon forbid my Lord Grey her house. My Lord Grey he made many pretences to my Lady, that he

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might come to the house to give them a visit before he departed, being to go into the country; and he takes the opportunity to settle this matter of conveying the young lady away in a very short time. And early on the Sunday morning, she was, by Charnock, another of the defendants, conveyed from the house of my Lord Berkeley at Epfom, and brought here to London. We shall in the course of our evidence shew how she was shifted from place to place, and the several pursuits that were made in search after her. We shall discover to you, how she was hurried from one lodging to another, for fear of discovery. Nay, we shall prove, that my Lord Grey has owned and confessed that he had her, that she was in his care and custody, and that he owned the several instances of his amours. But I had rather the evidence should speak it, than I open to much as the nature of it.

Sol. Gen. My Lord, we shall call our witnesses, who will very fully make out this evidence that Mr. Attorney has opened to you. That my Lord Grey did a long time make love to this young Lady, though he were before married to her sister. This treaty was discovered by my Lady Berkeley, last summer, upon an accident of surprizing the young Lady in writing a letter to my Lord, and thereupon my Lady Berkeley chargeth my Lord Grey with these applications to her daughter that did so much misbecome him. My Lord Grey was then so sensible of his fault, that he seemed very full of penitence, and assured my Lady, he would never do the like again, and earnestly desired her by all means, to conceal it from my Lord Berkeley; for if this should once come to be known to him, he and the young Lady would not only be ruined, but it would occasion an irreparable breach between their two families, and of all friendship between my Lord Berkeley and him. And therefore he desired my Lady Berkeley (who had justly forbid him her house for this

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this

this great crime) left the world should enquire into the causes of it, and so it should come to be known, that his banishment from her house, might not be so soon or sudden: But he begged of her Ladyship, that he might be permitted to make one visit more, and with all the protestations in the world assured her, it was not with any purpose of dishonour, that he desired to come and see her, but that his departure might be by degrees, and so the less taken notice of. When my Lady had thus charged my Lord with his unworthy carriage to her family, and he had seemed thus penitent for it; she charges her daughter also, with her giving any allowance to these undecent practices of my Lord's; she thereupon falls down on her knees to her mother, to ask her pardon for her great offence, and with tears in her eyes, confessed she had done very much amiss, and did humbly hope she might obtain her forgiveness for it, being young, and seduced by my Lord Grey, and promised she would see him no more, nor have any thing more to do with him. My Lord Grey he is permitted to come once more to the house, upon those asseverations and promises of his, that it should be with no dishonourable purposes in the world. It was, it seems, in his way to his own house at Sussex, but coming thither, he takes an occasion to continue there, and stay a little too long for a visit; whereupon my Lady Berkeley began to suspect it was not a transient visit he came to make at her house, but that he had some ill design in prosecution of the same fault that he had been so long guilty of. And that suspicion of her's was but too well grounded, as appeared afterwards. Our witnesses will tell you, that my Lord Grey, just before his departure, was observed to be very solicitous and earnest with his man Charnock (whom we shall prove by undeniable evidence to be the man that conveyed her away) giving him some di-

rections with great earnestness, what to do was indeed not heard, but the event will plainly shew it. For my Lord Grey himself, he went on his journey into Sussex, and lay at Guildford that night she was carried away, and the next morning she was missing. Thereupon my Lady sends after my Lord Grey, justly suspecting him to be guilty of this violence and outrage offered to her daughter and family, and they overtook him at Guildford before he was got any further on his journey, and there acquainted him the Lady was carried away, and that my Lady suspected (as well she might) he knew whither. Then immediately he makes haste up to town, and writes my Lady a letter, that truly he would take care to restore peace to the family that by his folly had been so much disturbed: And there were some hopes of retrieving the matter, that this scandal upon so noble a family might not be made public; for certainly an offence of this nature was not fit should be so, nor indeed was ever heard of in any Christian society; I am sure, I never read of any such cause in the courts of law. And it was impossible any way to have prevented the scandal, but that which my Lady took, to pass over all, by desiring to have her child restored again to her, before such time as it was gone so far, as there is too great reason to suspect it now is. But after that, my Lord Grey was so far from performing what he had so solemnly promised, and making the matter up, that he stood upon terms; he was master of the Lady, and he would dispose of her as he thought fit: Third persons and places must be appointed where she must be disposed of; with capitulations, that he should see her as often as he thought fit; which was (if possible) a worse indignity than all that he had done before.

We shall prove to your Lordship, that he did, a long time before this violence was offered, make application to this young Lady,

Lady; and that must (as any man will believe) be upon no good account. We shall shew all the base transactions in carrying away the Lady, after that confidence which my Lady reposed in his protestations to do nothing dishonourably, so as to admit him to make a visit; which certainly was the greatest breach of the very laws of human society, against all the laws of hospitality, besides the great transgression of the laws of God and men. Yet even then, he seduced the Lady away. For we shall plainly prove she was carried away by his coachman that once was, afterwards his gentleman, and how she was from time to time conveyed to and fro.

Serj. *Jefferies*. This story is indeed too melancholy to be often repeated, the evidence had better tell it: Only this one aggravation I would take notice of, which will be made out in the proof to you of this matter charged; and that is this, That my Lord Grey, after such time as it was known she was in his power, gave one reason for his not delivering her up (and I am sorry to see his Lordship should think it a reason) he had enquired how far the law would extend in such a case, and that he knew, and could give a precedent for it. (which the witness will tell you of) that the law could not reach him; and that as long as he had run such a course for obtaining that which was his greatest pleasure, he would not now part with her, but upon such terms, that he might have access to her when he pleased. To such a height of confidence was this gentleman arrived, in this barbarous and infamous wickedness. But as I said, it is a story too black to be aggravated by any thing but it by self; we shall therefore call our witnesses, and prove our fact.

About this time the Lady Henrietta came into the court, and was set by the table at the Judge's feet.

Earl of *Berkeley*. My Lord, my daughter is here in court, I desire she may be restored to me.

Serj. *Jefferies*. Pray, my Lord Berkeley, give us leave to go on, it will be time enough to move that anon. Swear my Lady Berkeley——(which was done, but she seemed not able to speak.)——

Sol. *Gen*. I perceive my Lady is much moved at the sight of her daughter. Swear my Lady Arabella her daughter. (Which was done.)

Serj. *Jefferies*. Pray, Madam, will you acquaint my Lords the Judges and Jury, what you know concerning the letter you discovered, and how you came by that discovery?

Lady *Arabella*. My mother coming to my Lady Harriett's chamber, and seeing there a pen wet with ink, examined her where she had been writing. She, in a great confusion, told her she had been writing her accounts. My mother not being satisfied with her answer, commanded me to search the room. Her maid being then in the room, I thought it not so much for her honour to do it then. I followed my mother down to prayers; after prayers were done, my mother commanded my Lady Harriett to give me the keys of her closet and her cabinet. When she gave me the key, she put into my hands a letter, which was written to my Lord Grey, which was to this effect——“My sister Bell did not suspect our being together last night, for she did not hear the noise. Pray come again Sunday or Monday, if the last, I shall be very impatient.”——I suppose my Lady Harriett gave my Lord Grey intelligence that this was found out; for my Lord Grey sent his servant to me, to acquaint me he desired to speak with me. When he came in first, she (I mean my Lady Harriett) fell down upon the ground like a dead creature. My Lord Grey took her up, and afterwards told me, said he,
“You

"You see how far it is gone between us;" and he declared to me, he had no love, no consideration for any thing upon earth but for her; "I mean dear Lady Hen." said he to me; for I say it just as he said it. And after this, he told me, he would be revenged of all the family, if they did expose her. I told him it would do us no injury, and I did not value what he did say; for my own particular, I defied him and the devil, and would never keep counsel in this affair. And afterwards, when he told me he had no love, no consideration for any thing upon earth but her, I told my Lady Harriett, "I am very much troubled and amazed, that you can sit by and hear my Lord Grey say and declare, he has no love for any but you, no consideration for any one upon earth but you, when it so much concerns my sister; for my part, it stabs me to the heart, to hear him make this declaration against my poor sister Grey."—

[Here she stopt a while.

Serj. *Jefferies*. Pray go on, Madam.

Lady *Arabella*. After this she said nothing; I told her I suspected my woman had an hand in it, and therefore I would turn her away. This woman, when my Lady Harriet ran away, being charged with it, swore she had never carried any letters between them; but after my mother's coming to London, both the porter at St. John's, and one Thomas Plomer accused her that she had sent letters to Charnock, who was my Lord Grey's coachman, now his gentleman. I told her then, I did much wonder, she being my servant, should convey letters between them without my knowing: She then confessed it to me, but withal she told me, "How could I think there was any ill between a brother-in-law and a sister?" And upon this she confessed to me she had sent letters to Charnock, though before she had forsworn it.

All. Gen. Madam, have you any thing further to testify in this cause? Have you any matters that you remember more?

Lady *Arabella*. There is more of it to the same effect; but all of it is only to this effect.

L. C. *J.* My Lady Arabella, pray let me ask you, have you any more to say to this matter?

Lady *Arabella*. It is all to this purpose.

Serj. *Jefferies*. Then if you please, Madam, to turn now your face this way towards the Gentlemen of the Jury, who have not heard what you said, and give them the same relation that you gave to the court; and pray be pleased to lean over the seat, and expose yourself a little, and let them have the same story you told before, and pray tell the time when it was.

Then she turned her face towards the bar.

Lady *Arabella*. It was in July, Sir.

Serj. *Jefferies*. Pray, Madam, tell what happened then.

Lady *Arabella*. In July last, some time then, my mother came into my Lady Harriett's chamber, and seeing a pen wet with ink, she examined her who she had been writing to. She, in great confusion told her, she had been writing her accounts, but my mother was not satisfied with that answer.—The sight of my Lord Grey doth put me quite out of countenance and patience.—

[Here she stopt again.

[My Lord Grey then was by the Clerks under the bar, and stood looking very stedfastly upon her.]

L. C. *J.* Pray, my Lord Grey, sit down (which he did) It is not a very extraordinary thing for a witness, in such a cause, to be dashed out of countenance.

E. of *Berkeley*. He would not, if he were not a very impudent barbarous man, look

look so confidently and impudently upon her.

Serj. *Jefferies*. My Lord, I would be very loth to deal otherwise than becomes me, with a person of your quality, but indeed this is not so handsome, and we must desire you to sit down. Pray go on, Madam.

Lady *Arabella*. After this, my mother commanded me to search my Lady Harriet's room; her maid being then in the room, I thought it not so much for her honour to do it then. I followed my mother down to prayers. After prayers were done, my mother commanded my Lady Harriet to give me the keys of her cabinet and of her closet, and when she gave me the keys, she put a note into my hand, which was to my Lord Grey; and that was to this effect—"My sister Bell did not suspect our being together last night, for she did not hear any noise; pray come again Sunday or Monday, if the last, I shall be very impatient."—I suppose my Lady Harriet gave my Lord Grey intelligence of this, for he sent a servant to tell me he desired to speak with me. Upon his first coming in, my Lady Harriet fell upon the ground like a dead creature, and my Lord Grey took her up, and said, "Now you see how far it is gone between us; I love nothing upon earth but her, I mean dear Lady Hen, (said he to me,) and if you do expose her, I will be revenged upon you and all the family, for I have no consideration for any thing but her." After that I told him, we defied him, he could do us no injury; and for my own particular, I defied him, and the devil and all his works, and would not have any thing to do with such a correspondence. After this, I told my Lady Harriet, I was much troubled and amazed, that she should sit by and hear my Lord Grey, her brother-in-law, say he had no consideration for any thing on earth but her. "For my part, (said I)

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Madam, it stabs me to the heart, to hear this said against my poor sister Grey." I told her I suspected my woman had an hand in this affair, and therefore I would put her away. Afterwards, the same day my Lady Harriet run away, this woman came to me, and I then told her, "You have ruined her (and asked her), Why would you send letters between my Lord Grey and my Lady Harriet?" She denied it, and swore she never did it, but when we came to London, the porter of St. John's came and accused her of conveying letters to Charnock, my Lord Grey's gentleman, formerly his coachman. I then asked her again about it; she then acknowledged to me she had done it. "But, Madam, (said she), how could I think there could be any prejudice or ill between a brother-in-law and a sister-in-law?" said I, "Were not you my servant? why did you not tell me? besides, you know we have all reason to hate Charnock for a great many things." This is all I have to say that is material, all else is to the same effect.

Serj. *Jefferies*. Now this matter being thus discovered to the Countess of Berkely, this unfortunate young lady's mother; she sent for my Lord Grey, and we shall tell you what happened to be discoursed between them two, and between the Lady and her mother, and what promises of amendment he made. My Lady Berkeley, pray will you tell what you know?

[She seemed unable to do it.]

—She is very much discomposed, the sight of her daughter doth put her out of order.

Lady *Arabella*. I have something more to say, that is, I told my Lady Harriet, after my Lord Grey had made his declaration of his love to my sister, to me, that if ever he had the impudence to name her name to me, I would immediately go to my father and tell him all.

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[Then the Countess lean'd forward, with her hood much over her face.]

Att. Gen. Pray, my Lady Berkeley, compose yourself, and speak as loud as you can.

Lady Berkeley. When I first discovered this unhappy business, how my son-in-law, my Lord Grey, was in love with his sister, I sent to speak with him, and I told him he had done barbarously and basely, and falsely with me, in having an intrigue with his sister-in-law. That I looked upon him next my own son, as one that was engaged to stand up for the honour of my family, and instead of that, he had endeavoured the ruin of my daughter, and had done worse than if he had murdered her, to hold an intrigue with her of criminal love. He said, he did confess he had been false, and base, and unworthy to me, but he desired me to consider (and then he shed a great many tears) what it was that made him guilty, and that made him do it. I bid him speak. He said he was ashamed to tell me, but I might easily guess. I then said, what? are you indeed in love with your sister-in-law? He fell a weeping, and said, he was unfortunate; but if I made this business public, and let it to take air (he did not say this to threaten me, he would not have me to mistake him) but if I told my Lord her father, and his wife of it, it might make him desperate, and it might put such thoughts into his wife's head, that might be an occasion of parting them; and that he being desperate, he did not know what he might do, he might neither consider family, nor relation. I told him this would make him very black in story, tho' it were her ruin. He said that was true, but he could not help it; he was miserable, and if I knew how miserable, I would pity him: He had the confidence to tell me that. And then he desired, though he said I had no reason to hear him, or take any counsel he gave me (and all this with

a great many tears) as if he were my son Dursley, that I would keep his secret. "For my Lord, if he heard it, would be in a great passion, and possibly, he might not be able to contain himself, but let it break out into the world. He may call me rogue and rascal perhaps in his passion, (said he), and I should be sorry for it, but that would be all I could do," and what the evil consequence might be, he knew not, and therefore it were best to conceal it. And after many words to pacify me, though nothing, indeed, could be sufficient for the injury he had done me; he gave it me as his advice, that I would let my daughter Harriet go abroad into public places with myself, and he promised if I did, he would always avoid them. For a young Lady to sit always at home, he said it would not easily get her out of such a thing as this. And upon this, he said again, he was to go out of town with the D. of M. in a few days, and being he had been frequently in the family before, it would be looked upon as a very strange thing, that he went away, and did not appear there to take his leave. He promised me, that if for the world's sake, and for his wife's sake, (that no one would might notice of it) I would let him come there, and sup before he went into the country, he would not offer any thing, by way of letter or otherwise, that might give me any offence. Upon which I did let him come, and he came in at nine o'clock at night, and said, I might very well look ill upon him, as my daughter also did, (his sister Bell) for none else in all the family knew any thing of this matter but she and I. After supper he went away, and the next night he sent his page, (I think it was) with a letter to me, he gave it to my woman and she brought it to me; where he says that he would not go out of town. —If your Lordship please, I will give you the letter— But he said, he feared my apprehensions

apprehensions of him would continue.—
There is the letter.

L. C. J. Show it my Lord Grey, let us see if he owns or denies it.

Lord Grey. Yes, pray do, I deny nothing that I have done.

Just. Dolben. Be pleased, Madam, to put it into the court.

Att. Gen. It is only about his keeping away.

L. C. J. Shew it my Lord Grey.

Serj. Jefferies. With submission, my Lord, it is fully proved without that.

L. C. J. Then let the Clerk read it, brother.

Cl. of the Crown. There is no direction, that I see upon it, it is subscribed Grey.

[Reads.]

MADAM,

“AFTER I had waited on your Ladyship last night, Sir Thomas Armstrong came from the D. of M. to acquaint me that he could not possibly go into Suffex; so that journey is at an end. But your Ladyship's apprehensions of me I fear will continue: therefore I send this to assure you, that my short stay in town shall no way disturb your Ladyship; if I can contribute to your quiet, by avoiding all places where I may possibly see the Lady. I hope your Ladyship will remember the promise you made to divert her, and pardon me for reminding you of it, since it is to no other end that I do so, but that she may not suffer upon my account: I am sure, if she doth not in your opinion, she never shall any other way. I wish your Ladyship all the ease that you can desire, and more quiet thoughts than ever I expect to have. I am, with great devotion,

Your Ladyship's,

Most humble, and

Obedient Servant,

Grey.

Att. Gen. Madam, will you please to go on with your evidence.

Lady Arabella. I have one thing more to say: after this, three or four days after this ugly business was found out, I told my Lady Harriett, she was to go to my sister Dursley's. She was in a great anger and passion about it, which made my mother so exasperated against her, that I was a great while before I got my mother to go near her again.

Serj. Jefferies. My Lady Berkeley, will you please to go on.

Lady Berkeley. When I came to my daughter, my wretched unkind daughter, I having been so kind a mother to her, and would have died rather (upon the oath I have taken) than have done this, if there had been any other way to reclaim her,) and would have done any thing to have hid her faults, and died ten times over, rather than this dishonour should have come upon my family. This child of mine, when I came up to her, fell into a great many tears, and begged my pardon for what she had done, and said, she would never continue any conversation with her brother in law any more, if I would forgive her; and she said all the things that would make a tender mother believe her. I told her, I did not think it was safe for her to continue at my house, for fear the world should discover it, by my Lord Grey's not coming to our house as he used to do; and therefore I would send her to my son's wife, her sister Dursley, for my Lord Grey did seldom or never visit there, and the world would not take notice of it. And I thought it better and safer for her to be there with her sister, than at home with me. Upon which this ungracious child wept so bitterly, and begg'd so heartily of me that I would not send her away to her sister's, and told me, it would not be safe for her to be out of the house from me. She told me, she would obey me in any

any thing; and said, she would now confess to me, tho' she had denied it before, that she had writ my Lord Grey word that they were discovered, which was the reason he did not come to me upon the first letter that I sent to him to come and speak with me. And she said so many tender things, that I believed her penitent, and forgave her, and had compassion upon her, and told her (tho' she had not deserved so much from me) she might be quiet (seeing her so much concerned) I would not tell her sister Dursley her faults, nor send her hither, till I had spoken with her again. Upon which, she as I thought, continuing penitent, I kissed her in the bed when she was sick and hoped that all this ugly business was over, and I should have no more affliction with her, especially if my Lord removed his family to Durdants, which he did. When we came there, she came into my chamber one Sunday morning before I was awake, and threw her self upon her knees, and kissed my hand, and cried out, "Oh Madam! I have offended you, I have done ill, I will be a good child, and will never do so again, I will break off all correspondence with him, I will do what you please, any thing that you do desire. Then, said I, I hope you will be happy, and I forgive you. Oh! do not tell my father (she said) let not him know my faults. No, said I, I will not tell him; but if you will make a friend of me, I desire you will have no correspondence with your brother-in-law; and tho' you have done all this to offend me, I will treat you as a sister more than as a daughter, if you will but use this wicked brother-in-law as he deserves. I tell you that youth and virtue and honour, is too much to sacrifice for a base brother-in-law." When she had done this, she came another day into my closet and there wept very much, and cry'd out, "Oh Madam! 'tis he, he is the villain that has undone me, that has ruined me. Why?

said I, what has he done? Oh! said she, he hath seduced me to this. Oh! said I, fear nothing, you have done nothing I hope that is ill, but only hearkening to his love.

"Then I took her about the neck and kissed her, and endeavoured to comfort her. Oh Madam! said she, I have not deserved this kindness from you; but 'tis he, he is the villain that hath undone me: but I will do any thing that you will command me to do; if ever he send me any letter, I will bring it to you un-opened; but pray do not tell my father of my faults. I promised her I would not, so she would but break off all correspondence with him --

[Here she swooned, and soon after recovered and went on]

—Then my Lord Grey's wife, my daughter Grey, coming down to Durdants, he was to go to his own house at Up Park in Sussex, and he writ down to his wife to come up to London.—It is possible I may omit some particular things that were done just at such or such a time, but I speak all I can remember in general. My Lord Grey, when I spoke to him of it, told me, he would obey me in any thing, if I would banish him the house he would never come near it; but then he pretended to advise me like my own son, that the world would take notice of it, that therefore it would be better for me to take her abroad with me, he would avoid all places where she came, but he thought it best for her not to be kept too much at home, nor he absolutely forbid the house, but he would by degrees come seldomer, once in six weeks or two months. But to go on to my daughter Grey's coming down to Durdants, he writing to his wife to come up to London, that he might speak to her before he went to his own house at Up Park, my daughter Grey desired he might come thither, and it being in his way to Sussex, I writ him word, that believing he was not able to go to Up Park in one day from London, he

he might call at my Lord's house at Durdants, and dine there by the way, as calling in, intending to lie at Guilford, for it is just the half way to Guilford. He, instead of coming to dinner, came in at nine o'clock at night (I am sure it was so much) for it was so dark, we could hardly see the colour of his horses, from my Lord's great gate, to the place where we were in the house: And coming at that time of night, I thought if I turned him out of the house, my Lord would wonder at it, and so would all the family. Therefore I was forced, as I then thought in point of discretion, to let him lie there that night, which he did, and he told me, "Madam, I had not come here, but upon your Ladyship's letter, nothing else should have brought me:" Because I was to give him leave to come, knowing the faults he had committed against the honour of our family. Upon which I told him, "My Lord, I hope you have so much honour and generosity in you, after the promises you have made me, and the confidence and indulgence I have shewn you, that you will give my daughter no letters, and I will look to her otherwise, that you shall have no conversation with her." He desired me to walk up with him into the gallery, and there he told me he had brought no letters, and would have had me looked in his pocket. I told him that would be to no purpose, for his man Charnock (whom we knew he did not prefer from being his coachman to be his gentleman, but for some extraordinary service he did him, or he thought he would do him) might have letters enough, and we be never the wiser: But I trusted to his honour and his Christianity; and I told him, that his going on in any such way would be her utter ruin. He told me he would not stay there any longer than the next day; nay, he would be gone immediately if I pleased, and he sent his coach to London, and had nothing but horses

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left. But his wife desiring her husband to stay, I had a very hard task to go through, being earnestly prest, both by her and my own Lord's importunities for his stay. But my Lord Grey, whilst he was there, did entertain me with his passion, he had the confidence to do it, and he wished himself the veriest rake-hell in the world, so he had never seen her face since he was married. "And, (said he) Madam, you will always think me a villain, and never have a good opinion of me, I shall be always unfortunate both in myself, and your bad opinion of me." Seeing this, I thought it was time to do something more; and I told him that night he should stay no longer, he should be gone; and his wife seemed to be much concerned, and would fain have him stay. For by this time she began to find out that there was some disorder in her mother and the family, though she knew not what it was; and she sent her sister Lucy to beg he might stay: I told her I would not suffer it: However, she proposed an expedient how her sister Harriett should take physic, and keep her chamber while he was there. That I was in a sort compelled to do, and I told him, upon their importunity for his stay, that his sister Harriett should be seen no more by him, but take physic while he stayed there: To which he replied, "Madam, indeed it is rude for me to say it to you, but I must say it, give me my choice, either to be drowned or hanged." Upon this I was extremely disturbed, and the next morning, I told him, I was not satisfied he should stay in England; he had ordered his wife to go into France, and she was to go within a month after, I would have him go with her; he told me he had law-suits and he could not: I told him, he had told me before, they were of no great consequence, and therefore they could not hinder him; and I pressed him very much, and I fell into a great passion at last; and told him, if he would not go, I would tell her

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her father, and he should take care of her, to send her where she should be safe enough from him. For I was sensible the world would take notice, if he came not thither; and said I, "I am not able to bear you should." Upon this, he promised me with all the oaths, imprecations and promises in the world, that he would go and follow his wife into France at Christmas, and stay there eight months; and by that time, I did hope this unfortunate miserable business might be over: For I had a great kindness for my child, and would have done any thing to save her, if it had been in my power, or would yet do any thing: I would give my life that the world did not know so much of it as now it must this day. The world knows I had always the greatest kindness and tenderness for her, which was such, that some that are now here have said since, that it was my indulgence to her, and not making it known to my Lord, that encouraged this last ill business. And thereupon my Lord Grey was ordered by me to go away, and he promised me so to do, which was upon Saturday. I then went up to her chamber and saw her very melancholy, and did what I could to comfort her. Said I, "I warrant you, by the grace of God, do but what you ought, and I will bring you off of this business, be chearful, and be not so much cast down (for I thought she was troubled at my carriage to her) and though I said some severe things to you at dinner (as I did talk of her going away, and being sent abroad) be not troubled, for I only meant it out of kindness to you; for all I design, is only to seek an occasion of getting him away; and therefore, as long as he stays, I will seem to whisper with you, and look frowningly upon you, that if he hath any tenderness for you, he may see I am angry with you, and do the more to leave you at quiet: But take no notice of it, for I now smile to you, though I frowned before him, be not

affrighted." In the afternoon I told her the same thing again. "But then, (said she) he will shew my letters to him, and that will ruin my reputation for ever, and that troubles me, but yet it need not, for I never writ to any man but him, and if he doth shew them, he will expose himself for a base unworthy man, and I can but deny it, and he can never prove it. This is true, (said I) and very well said, and therefore be not afraid of him, but trust to the friendship of your mother, and do as you ought to do, and I am confident we shall bring you clear off from this ugly business." "And then (said she), But oh, Madam! my sister, my sister Grey, will she forgive me this?" I told her, her sister Grey was good-natured and religious, and I made no doubt she would forgive her the folly of her youth, and if she would take up yet, she was young, and her sister would impute it to that, "and, (said I) I am sure she will forgive you;" and I told her, I would do all that lay in my power to assist her; and I bid her be chearful and trust in God and in my friendship. She was to blame, indeed, she acknowledged, but she was young, and he was cunning, and had made it his business to delude and intice her. I told her it was true, and therefore now she must consider with herself, what was to be done to bring her off; which I doubted not, if she would do but as she ought; she promised me so to do; and yet that very night when I was in my sleep she ran away.—

[Here she swooned again.

Serj. *Jefferies*. What time went my Lord Grey away, Madam, that day?

Lady *Berkeley*. He went away about four o'clock in the afternoon.

Serj. *Jefferies*. And the ensuing night the Lady was gone?

Lady *Berkeley*. Yes, that night she went away too.

Serj. *Jefferies*.

Serj. *Jefferies*. My Lord, I crave leave to acquaint you with one circumstance that has been already hinted, that is about Charnock, a person that is taken notice of by both the Ladies that have given evidence, and one of the defendants in this information. This man, as they seem to intimate, for some extraordinary service he had done my Lord Grey, or was designed for the doing of, was removed from the degree of his coachman, to the waiting upon him in his chamber. He at this time came with my Lord Grey to Durdants, a house of my Lord Berkeley's near Epsom, and which was in the way to my Lord Grey's house in Suffolk, that is called Up-Park. And they being there, notwithstanding all these protestations and promises made by my Lord Grey to his Lady mother, as you have heard, to meddle no more in this matter, yet we shall give you an account, how that the day before the night that the young Lady went away, my Lord Grey was very importunately busy with his man Charnock, what discourses they had, or what directions he gave him perhaps may not be known; but his earnestness in talking with him, and his impatience and restlessness we shall prove, and then give you a very full proof that Charnock was the person that took her away, and then let the jury and the court make the conclusion.

All. Genl. It may be, my Lord, we shall not be able to prove the actual taking away from thence, but only by undeniable circumstantial proof. Such impositions are not to be acted openly.

L. C. J. Truly, as far as I can see, here has been more done bare-faced, than one would think should be done in any Christian nation.

Then a clergyman that stood by was sworn, but his name not told.

Serj. *Jefferies*. Pray, Sir, will you tell my Lord and the jury what you know.

Mr. —. My Lord, I was at Durdants, my Lord Berkeley's house near Epsom in Surrey, at the time of this ill accident, and some time after. And upon the Saturday in the afternoon I (immediately after dinner was over at my Lord's own table) walked into the great paved hall; and stood in the door that looked towards the Downs; and my Lord Grey came into the hall alone, and walked three or four times very thoughtfully, and then leaned upon the window, and often looked upon the ground, and within a little while he steps into the steward's hall, where the gentlemen were at dinner, and he calls to Charnock, who came out to him. He takes him out of the hall to the foot of the staircase, and there they talked together a great while, and after some time my Lord Grey went away, and Charnock did so too. I think to his dinner again, I cannot tell any thing to the contrary. The reflection I made upon this passage then was, That my Lord Grey was very punctual in giving his servant orders, which I thought he was to carry to London with him, but I suspected nothing of this matter, nor any thing else that was ill then. Mr. Charnock then passing by me, said I, "Mr. Charnock, how long will it be before you are going?" He made me no answer, not one word. Thereupon I went into the library, and between that and Mr. Charnock's chamber there was but a very thin wall, and presently after I came into the library, my Lord Grey sent one (as the messenger said) for Mr. Charnock, and he went down to him, as I suppose, and in a little time came up again. And after that, I do believe I did hear another messenger come from him to Mr. Charnock again, I will not swear that, for I am not sure of it; because, being at that time busy in reading, I made no reflection upon it till afterwards. But about a fortnight or three weeks after, there comes a gentleman to see me at my lodgings,

lodgings, and falling into discourse what news there was; our first discourse was of the Lady's being missing; he said, it would be sad he feared when she was heard of. "Why, (said I) what do you mean? I suppose Mr. Forrester and she are together," for that was the talk of the town. "No, (said he) it is no such thing; but if you will make it a secret, unless it comes to be made a public business, I will tell you; I do not doubt my Lord Grey carried her away with a design to debauch her. That is hard to be believed, (said I) I cannot believe it. Why, (said he) you were there when he went away? Yes, (said I) but how long was that before the Lady was missing? (said he) It was that afternoon." Then came into my mind his earnest discourse with Charnock, and that which I observed about it, and the sending so often for him; and I told that person of it. "Why Charnock, (said he) was the man that took her away."

Serj. *Jefferies*. Who was it that said so to you, Sir? Name him.

Mr. —. Mr. Rogers, my Lord Berkeley's Chaplain.

Serj. *Jefferies*. If your Lordship please to observe the particular times, when my Lord Grey was so earnest in giving Charnock directions, that was on the Saturday at noon, and it was that night the young Lady went away.

L. C. J. When came my Lord Grey to my Lord Berkeley's?

Att. Gen. The Tuesday or Wednesday before, I think, some days it was.

Serj. *Jefferies*. But upon the Saturday night it was she went away; this unfortunate Lady that we have produced, her mother, and so the Lady her sister, spoke both of their fears of Charnock. Now we shall prove, that this Charnock was on the Sunday morning, at eight of the clock in the morning here in London, with a young Lady, in what habit that young Lady was,

our witnesses will tell you; and others will give you an account what habit this Lady went away in, and then it will be seen who she was. Call Eleanor Hilton.

Att. Gen. But if you please, Mr. Serjeant, I think it will be proper first to examine my Lady Lucy, who upon the missing this young Lady followed my Lord Grey to Guildford, and overtaking him, acquainted him with it, and immediately he took post and came to London. Pray swear my Lady Lucy. [Which was done.

L. C. J. Well, what do you ask that Lady?

Serj. *Jefferies*. We produce her, my Lord, to hear what passed between her and my Lord Grey at Guildford. Pray, Madam, will your Ladyship acquaint the court what occasion you had to go to Guildford, and what you said to my Lord Grey, and what he said to you, and did afterwards.

Lady Lucy. My Lord, as soon as my Lady Harriett was missing, supposing my Lord Grey could best give an account where she was, I went after him to Guildford, and he was gone half an hour from thence before I came thither, but by sending post after him, he was overtaken, and came back to me. I told him my Lady Harriett was gone away, and I conjured him by all that was sacred and dear to him, to prevent so great a misfortune as this would be to the family. He then pretended he did not know any thing of her going, but promised me, that if he could find her out, he would endeavour to persuade her to return home, but he would not force her. After several discourses, which it is impossible for me to remember particularly (saying that he had done nothing that was illegal, and if she did not any thing, we could do nothing against him;) He at last parted from me, to go to London, as I suppose. I begged of him that I might be permitted to go along with him, that I might speak to her, supposing

supposing I might retrieve this business, and recover her, before it were gone too far, but he denied it me, and went away. After that I met him, a day or two after, I think, I cannot tell justly the time, and he pretended, he did not know where she was, but only he knew where to send to her; and he would do all he could to get her to return home. He was sensible of what a misfortune this was to the family. But soon after, he went to Up-Park again, as he said, to shew us that he was not with her. And he afterwards writ me a letter, wherein he says, he could not persuade her to come home, but the conclusion of it was, "He would do all he could to restore peace and quiet to the family, which by his follies were so miserably disturbed."

Lady Arabella. My Lord, I desire to speak one thing, About six weeks ago I met my Lord Grey at my Lord Chief Justice's chamber, and he told me, he had my Lady Harriett Berkeley in his power, or in his protection, or to that effect, he said.

Att. Gen. Pray tell, Madam, when that was?

Lady Arabella. About six weeks ago, I cannot justly say the day.

Serj. Jefferies. But if your Ladyship pleases, my Lady Lucy, it will very much satisfy the jury, if you would shew the letter you speak of.

Mr. Williams. Ay, pray Madam, shew the letter.

Lady Lucy. It was a letter before that which he writ to me at Durdants.

L. C. J. When was that letter you speak of written?

Lady Lucy. About a week after my sister was gone, I cannot exactly remember the day.

Williams. Pray, Madam, can you produce that letter?

Lady Lucy. No, I have it not here.

Serj. Jefferies. Then swear Eleanor Hilton.

[Which was done.

Sol. Gen. Is your name Eleanor Hilton?

Hilton. Yes, it is, Sir.

Att. Gen. Pray speak out, that my Lord and the jury may hear you. Do you remember the 20th of August last? Did Charnock come to your house with a young Lady? Did you see her, and what time of the day was it?

Hilton. I cannot tell what day of the month it was.

Serj. Jefferies. What day of the week was it?

Hilton. It was on a Sunday.

Sol. Gen. What month was it in?

Hilton. I cannot tell, truly.

Serj. Jefferies. About what time of the year was it?

Hilton. About eight or nine weeks ago, or something more.

Serj. Jefferies. Well, what did you see then?

Hilton. There was a young Lady that came to our house, she came of herself, Charnock he was not with her; he came before indeed, and asked me if I had any room to spare, and I shewed him what we had; he went away, and I saw no more of him; afterwards, as I said, she came; but who she was, or what she was, I cannot tell.

Serj. Jefferies. Can you describe her cloaths?

Hilton. She had a coloured night-gown on, of several colours; I cannot say what particular stuff it was: And she had a petticoat on white and red.

Serj. Jefferies. Did you see her face?

Hilton. I cannot say I did fully.

Att. Gen. Do you think you should know her again, if you should see her?

Hilton. I cannot say that.

Serj. Jefferies.

Serj. *Jefferies*. (to the Lady Harriet) Pray, Madam, will you stand up a little, and turn up your hood. [Which she did.]

Hilt. Truly, I cannot say that is the Lady.

Att. Gen. Do you believe it was she?

Hilt. I cannot say it truly.

Att. Gen. Have you seen her picture since, and is this Lady like that picture?

Hilt. Mr. Attorney, she says, she cannot say it is the same Lady.

Sol. Gen. Pray, mistress, to what purpose was she brought to your house?

Hilt. They did not tell me that.

Att. Gen. Was it not to lodge there?

Hilt. She staid there but a while, and went away again.

Att. Gen. Whither did she go then?

Hilt. To one Patten's in Wild-street.

Serj. *Jefferies*. You went with her mistress, did not you?

Hilt. Yes, I did so.

Serj. *Jefferies*. Pray, was there any letter or note brought to your house for Charnock?

Hilt. Yes, I brought it to Mrs. Charnock.

Serj. *Jefferies*. Did you hear any reason given for her removal from your house?

Att. Gen. Pray did she go to bed at your house?

Hilt. She did lie down.

Serj. *Jefferies*. What time of the day was it?

Hilt. About nine or ten o'clock in the morning.

Sol. Gen. Pray, did she say she had been at church, or what did she say?

Hilt. She said somewhat to that purpose, she said she was weary.

Serj. *Jefferies*. What company came to the Lady, while she was at your house?

Hilt. No body but Mrs. Charnock.

Serj. *Jefferies*. Did you see Mrs. Charnock in her company?

Hilt. Yes.

Serj. *Jefferies*. You saw her come in to her.

Hilt. Yes.

Serj. *Jefferies*. Did she behave herself to her as to a Lady of Quality?

Hilt. I cannot tell that, truly.

Serj. *Jefferies*. Why how did she carry it to her?

Hilt. Whether she was in bed or no, I cannot tell; but when she came in, the young Lady said, How do you do, Mrs. Charnock? She said, your servant, Madam, or to that purpose, I cannot exactly tell.

Serj. *Jefferies*. You brought the note to Mrs. Charnock, you say?

Hilt. Yes.

Att. Gen. Did she stay at Mrs. Patten's after that?

Hilt. I suppose she might.

Sol. Gen. Pray recollect yourself a little, and tell us what colour was her manteau?

Hilt. Truly, it was all manner of colours, red, and green, and blue, and I cannot tell what colours.

Sol. Gen. What coloured petticoat?

Hilt. Red and white.

Sol. Gen. How long after this, did you hear my Lord Berkeley's daughter was missing?

Hilt. A while after.

Att. Gen. How long? was it that week?

Hilt. I cannot tell, it was not long after.

Att. Gen. Was it the same Lady that came to your house in those cloaths, that went to Patten's at night?

L. C. J. Why, she says she went with her, do not examine her the same things over again.

Att. Gen. Were you examined before Sir William Turner about this matter?

Hilt. Yes, I was.

Att. Gen. Was it the day of the month you then said it was?

Hilt.

Hilt. I suppose it might ; I cannot tell the day of the month.

Att. Gen. Was it the month ?

Hilt. It is like it was.

L. C. J. She has fixed it now to be about eight or nine weeks ago.

Serj. Jefferies. Did she give any reason why she was removed ?

Hilt. None at all.

Serj. Jefferies. Now, my Lord, we will bring it down to be this very Lady. My Lady Arabella, pray, Madam, what cloaths did my Lady Harriet go away in ?

Lady Arabella. My Lady Harriett had such cloaths as they speak of, I cannot say she went away in her night-gown, but here is one that can ; but there was a striped night-gown, of many colours, green, and blue and red.

L. C. J. She does remember she had such a one, but she cannot say she went away in it.

Serj. Jefferies. Was there not a chequer'd petticoat red and white ?

Lady Arabella. She had such a petticoat, but I cannot say she went away in it ; she had also a white quilted petticoat.

Serj. Jefferies. Then swear Mrs. Doney. [Which was done.] My Lord, we call this gentlewoman to give an account what habit she went away in ; for she lay with her always.

Att. Gen. Did you lie with my Lady Harriett Berkely when she stole away ?

Mrs. Doney. Yes, indeed, Sir, I did lie in the chamber that night, and she went away with her morning cloaths, which lay ready for her there, against she did rise in the morning. It was a striped night-gown of many colours, and a petticoat of white and red, and a quilted petticoat.

Att. Gen. Was she so habited, that came to the house, Mrs. Hilton ?

L. C. J. She has said so already.

Serj. Jefferies. Now you are pleased to observe, that besides the circumstance of

the cloaths, there is mention made of a note ; Mrs. Hilton says she received a letter and gave it to Mrs. Charnock ; and that soon after they went to Patten's house in Wild-street. We shall call the people of that house, to give an account what gentlewoman it was that came to their house. Pray swear Mr. Patten.

[which was done.]

Sol. Gen. Pray, will you tell my Lord and the jury, whether Mr. Charnock and his wife came to your house, and with whom, and about what ?

Patten. My Lord, about the latter end of July, or the beginning of August, Mr. Charnock and his wife came to my house when we were just removed, to take some lodgings for a person of quality ; but they did not say who. Said I then, "We have no lodgings now ready ;" said they, "We shall not want them yet, till towards the middle of September." Says my wife, "I suppose by that time our house will be ready ; and if it will do you any kindness you may have it." About the 20th of August, being Sunday, Mrs. Hilton brings a gentlewoman with Mrs. Charnock, to my house ; and when they were come, they called me up, and seeing them all three there, I told Mrs. Charnock, "We have no lodgings fit for any body of any quality, at present." Says Mrs. Hilton, "let's see the candle," and runs up stairs into a room where there was a bed, but no hangings ; when they came in, they locked themselves into the room. My wife's daughter being in the house, I desired her to send for my wife, who was then abroad ; which she did. They desired my wife's daughter to lodge with the gentlewoman that they brought thither, and they were making the bed ready. I sent them up word, "that I desired they would walk into the dining-room for the present ;" they sent me word down again, "They did not desire to do that, for they were afraid the light would be."

be seen into the street;" and withal, if any body came to enquire for Mrs. Charnock or Mrs. Hilton, I should say there was no body there. Presently after, I think (or before, I cannot justly say which) a letter was carried up stairs to them, upon which they came down stairs, and away they went up the street, and when they were gone a little way on foot, Mrs. Charnock desired them to turn back again, for she hoped to get a coach, and she did so, and went away.

Att. Gen. So they did not lodge there?

Patten. No, they did not.

Serj. Jefferies. Did they say any thing of care that was to be taken, how they pass'd by my Lady of Northumberland's?

Patten. My Lord, I do not well remember that; but the next day Mrs. Hilton comes again to our house, and she runs up stairs into the same room, and sits her down upon the bedside. Said I to her, "Mrs. Hilton, What gentlewoman was that that was here last night?" Says she, "I cannot tell, but I believe she is some person of quality, for Mrs. Charnock brought her to our house at seven o'clock in the morning. But whoever she is, she is much troubled, we could get her to eat nothing, but her eyes were very red with crying, and we came away to your house at night: because hearing some noise of people in the street, she was afraid some of her father's servants were come, but it was only some people that were gathered about to observe the blazing star. So we whipp'd out of the door, and so came to your house, for we had never a back door out of our own."

Att. Gen. Pray give an account what habit the gentlewoman was in that came to your house?

Patten. She had a striped flower'd gown, very much sullied, it was flung about her, just as if she had newly come out of bed. I did see her face, but when I had just looked upon her, she clapped her hood to-

gether over it presently.

Serj. Jefferies. Do you think you should know her again if you see her?

Patten. I believe I might.

Serj. Jefferies. Pray, Madam, stand up again, and lift up your hood.

[Which she did.

Patten. This is the Lady. I saw her face twice, once as I told you, and then when she went away, I dop'd down and peeped up, and looked her in the face again, though she hid it as much as she could.

Att. Gen. Thus we have proved it upon Charnock and his wife.

Serj. Jefferies. He gives an account of the 20th of August, which was the day after she went from her father's house. Pray call Mrs. Fletcher.

Att. Gen. We shall now prove, that they went from thence to one Jones's; that my Lord Grey came there to take lodgings, and after she was brought, came thither again, and though he changed his hair into a perriwig, yet he was known for all his disguise.

Sol. Gen. My Lord, you see that it is proved upon three of the defendants, my Lord Grey, and Charnock and his wife; now we shall prove it upon the other two, the Jones's. Swear Mary Fletcher.

[Which was done.

Serj. Jefferies. Sweetheart, pray tell the court, where you lived, and when my Lord Grey came to your house; tell the time as near as you can, and the day of the week?

Fletcher. Sir, he came to David Jones's on the Tuesday after my Lady Berkeley was missing.

L. C. J. Where does David Jones live?

Fletcher. At Charing-cross, just over against the Statue. And living there, my Lord Grey came there in a hackney coach, first on the Monday without a perriwig, or any thing of that, and desired Mr. Jones to come to the coach-side, which he did, and after a little discourse with Mr. Jones, they came

came both into the house, and went up two pair of stairs to look upon lodgings. After that, I had order to make ready the room for some lodgers who were expected to come that night, but did not till the next day. About Tuesday at nine of the clock, my Lord Grey comes again in a coach to the door, and threw his cloak over his face, he was then without his perriwig too, and desired to speak with Mr. Jones, I and my fellow servant standing at the door, he desired to speak with my master. I went to him and told him, and he came up, and after he had been at the coach-side, he bid us go down, and keep down in the kitchen, and would not let us come up any more. And afterwards, my fellow servant and I were bid to go to bed, and my mistress shut up the shop windows herself.

Serj. *Jefferies*. Well, go on, what happened after that?

Maid. Afterwards there was the warming-pan, and the candlestick, and other things were carried up into the chamber by my mistress's sister. Says my fellow-servant, "There is some great stranger sure, come to lodge here, that we must not know of." "Ay, (said I) this is some great intrigue or other." After a while came in some company that stayed all night. I know not who they were, nor how they came.

Serj. *Jefferies*. Well, what was done the next morning?

Maid. I was never admitted into the room while they were there, but through the opening of the door, I did see one Lady in bed, but I cannot say who she was, nor what she was.

Att. Gen. Do you know her if you see her again? Look at that Lady; is that she?

Maid. No, I do not know her; I cannot say that is she: My mistress and my mistress's sister stood both before me, when I just peeped into the room, and when she

perceived that, I did see her pull the cloaths over her face.

Sol. Gen. How long did she stay there?

Maid. Nine nights.

Serj. *Jefferies*. Do you know my Lord Grey well?

Maid. Yes, I have seen him often.

Serj. *Jefferies*. And did you know him notwithstanding his disguise?

Maid. Yes.

Serj. *Jefferies*. What did Mrs. Jones say to you about my Lord Grey?

Maid. She said to us, "What fools were we, to say this was my Lord Grey, it was a country gentlemen."

Serj. *Jefferies*. But you are sure it was my Lord Grey?

Maid. Yes, I am sure it was he.

Att. Gen. Did any body else lodge at your house at that time.

Maid. Yes, Captain Fitz-Gerard.

Att. Gen. What discourse had you with him about this lady?

Williams. You, woman, did my Lord Grey stay there?

Maid. I cannot say he did.

L. C. J. Mr. Attorney, if the question you ask, be to introduce another part of your evidence from Captain Fitz-Gerard himself, it may be something; otherwise that can be no evidence against the defendants, what discourse was with another.

Serj. *Jefferies*. It is so, my Lord. And therefore we ask you, Sweetheart, what past, between you and the Captain?

Maid. Captain Fitz-Gerard, the Monday morning se'ennight, after my Lord Grey first came, called me to his bedside, and asked me if I knew what Lady that was that lodged in the house, and what cloaths she wore, and whether she were young or old, and whether she were married or no? I told him, I could not tell any thing, for I could never see her.

Serj. *Jefferies*. Do you know what linnen
6 O she

she brought with her? did you wash any for her?

Maid. Yes, one shift.

Att. Gen. What kind of shift was it?

Maid. I said, "It could be no person of quality, by her shift."

Serj. Jefferies. Why so?

Maid. Because the body was finer than the sleeves, and ladies use to make the sleeves finer than the body.

[At which there was some laughing.

Williams. A very pretty evidence!

Serj. Jefferies. Pray call Mrs. Doney again, because you shall not make so slight a business of the shift as you pretend, for such actions as these must be detected by circumstances.

Att. Gen. Mrs. Doney, Pray did you shew this woman another of my Lady Harriett Berkeley's shifts?

Mrs. Doney. Yes, I did.

Serj. Jefferies. Was it the fellow of that she went away with?

Mrs. Doney. Yes, it was.

Serj. Jefferies. Woman, do you believe upon your oath, that was the fellow of the shift you saw?

Maid. Yes, Sir.

Serj. Jefferies. Was the body of that you saw from this gentlewoman, finer than the sleeves?

Maid. Yes, it was.

Att. Gen. Then pray swear Captain Fitz-Gerard. [Which was done.

Sol. Gen. Pray, Sir, will you tell the court and the jury, what passages fell out at your lodgings?

Capt. Fitz-Gerard. My Lord, it was my fortune, six months ago, to take a lodging at Mr. Jones's, and while I kept my lodgings there, I had occasion sometimes to go to Windsor, to wait upon his Majesty; and one night coming home to my lodgings, my servant that waits upon me in my chamber, told me, there was a lodger lately come to the house, who lay in the upper

rooms. I asked who it was, he told me, the maid of the house told him it was a mistress of my Lord Grey's. I asked how long she had been there, he said it was but two or three days since she came. I never thought of this for four or five days after, nor thought myself obliged to take notice of the discourse of the servant in the house: but being in Covent-Garden in company, there was some discourse about my Lady Harriett Berkeley's being gone from her father's, as it was the talk of the town. I came home about nine o'clock at night, and having no servant just then ready to wait upon me, Mr. Jones himself came very kindly to put me to bed. I had some fancy upon the discourse of the town, this might be my Lady Harriett. Upon which, I said to Mr. Jones, "You cannot but hear of the report of my Lady Kerkeley's being run away from her father, and I know you have a dependence upon my Lord Grey, and I have a suspicion you conceal her in your house. If you do, (said I), you do a very dishonest thing, a very ill thing, and occasion a great deal of trouble and disquiet to a noble family. And possibly my Lord and my Lady, may not know she is alive; therefore, I desire you as a friend, to make a discovery of the Lady, that they may know where she is." He seemed very angry upon my saying of this, and told me, "As long as I lodged in his house quietly, I need not trouble myself who lodged there besides." Upon that I thought more earnestly upon this thing; and I told him again, "I am resolved to go into the room, and know who this Lady is that lies here, for now I suppose there is something more in it," Says he again, "Nobody shall offer such a rudeness in my house." Said I, "I assure you I will do it." He grew very angry, but I went from him to my sword, and was going up. Says he, "Pray, Mr. Fitz-Gerard, do not offer such a thing as this is: you would take it unkindly yourself, to have your

your house searched at this time of night." "Well, (said I) upon condition that I may see her to-morrow morning before she goes away, who she is, I will make no disturbance in your house to-night." Upon that he left the room, promising me, I should to-morrow morning see who the lady was. I went out early the next morning, upon some necessary business, and coming home between eleven and twelve o'clock, said I to him, "Now is a very civil time to see this Lady, who she is, for it is not fit you should receive any person into your house, in such circumstances, when there is such cause of a suspicion." Says he, "She is now going out in the house." And this is all that I can say of this matter. I never saw the lady there then, nor did I ever see her in my life but once or twice at Epsom.

L. C. J. Did they lock the door upon you, Captain?

Capt. Fitz-Gerard. No, they did not.

Serj. Jefferies. And you know nothing more?

Capt. Fitz-Gerard. I neither knew when she came, nor who she was.

Att. Gen. Then swear Mr. Smith here, who married one of my Lord Berkeley's daughters.

[Which was done.

Smith. Before my Lord Berkeley made this affair public, he used all means possible to know where my Lady Harriett was; and after it was known to him, what concern my Lord Grey had in it, there were all means used to make it up: And discoursing with my Lady Berkeley about it, it was proposed that she should be married, but that would cost a great deal of money; that my Lord did not stick at, nor my Lady, if any divine of the church of England did think it proper to treat with any person about it, after such a secret correspondence between her and my Lord Grey. And my Lord said, "If my Lord Grey would not prosecute her with any more

visits, he would give a sum of money to marry her." Said I, "Then, my Lord, will you give me leave to wait upon my Lord Grey in it?" He answered, "Yes." So I went to him, and offered him that my Lord Berkeley would give 6000*l.* with her, if he would place her in a third hand, where it might be convenient to treat with any one about it. He talked with me as if he knew where she was, but would not discover it. Says he, "You must always suppose, I will take your proposal in this manner, if she is in my power, which it may be is, and it may be not." Said I, "My Lord, you make that if only as a subterfuge, for to be sure, you know where she is." Says he, "She is beyond seas, and if you will give me leave to visit her sometimes, I will promise she shall come again; but that depends upon time and tide, it cannot be so very soon." Said I, "My Lord you may as well send horses to Dover, and so over to Calais, for I suppose she may not be far." He said, "It would be a work of time, but he would write to her." I desired he would write that night. "For, (said I) my Lord, if this business be taken in time, she may yet be saved, if you will contribute what you can to it." He promised me to write that night to her, but it would be some time before she got to town. Then, discoursing further with my Lord about it, says he, "If I should bring her to town, I will not use any force or persuasion to her, if she be obstinately bent not to come home again, betray her to be sure I will not." "I am sure, my Lord, (said I) that your persuasions would do very much with her, and a great deal of good may come of it, if the matter be speeded." "But, (says he) if I should bring her to town, then my Lord Berkeley will disturb her with my Lord Chief-Justice's warrant." Said I, "If you will bring her to town, I will ask my Lord and my Lady, how long time they will allow for the making up of this treaty; and in

in the mean time, she shall be free from any disturbance." Says my Lady Berkeley, when I spoke to her of it, "Though my Lord Grey has been so barbarous to a family, that has been so kind to him; yet, if I give him my word, I will keep it inviolably to him; and I do promise him, if he will bring her to any place where my daughter Lucy may visit her, I will engage there shall be no search made after her. And if he can contribute to carry her into a place where she may be safe, and not visit her himself, he shall have 2000*l.* to do it." "This message of my Lord's being barbarous, Madam, (said I) is not fit for me to carry to my Lord Grey, but you will promise not to take her away, if he bring her to town, but from the moment you know where she is, she shall be safe." Thereupon my Lord Grey promised to write to her, whether he did or not, I cannot tell. Afterwards, he said he had writ, but she would not come.

Att. Gen. What expence has my Lord been at in looking after her?

Smith. A great expence, I cannot tell particularly.

Serj. Jefferies. My Lord, we have but one witness more, and that is a gentleman, who, by order from my Lord and Lady Berkeley, kept my Lord Grey company, and he will tell your Lordship, what my Lord Grey confessed to him, what a passion he had for the Lady, and what methods he used to get rid of it, but could not. Swear Mr. Craven. [Which was done.]

Sol. Gen. Will you tell my Lord and the Jury, whether you were sent by my Lord Berkeley, to be with my Lord Grey at Up-Park, and what passed there between you?

Craven. My Lord, the Wednesday after my Lady Harriet Berkeley went away, my Lady Berkeley told me, my Lord Grey had proffered he would go down into the country for six months, to shew that he had no designs upon her; and therefore, if she

would propose some friend of hers to go along with him to keep him company, he would be very well satisfied with it; and then my Lady Berkeley told me, she would fix upon no body but me, if he would take me with him. Then I met my Lord Grey on Wednesday morning at Sir Thomas Armstrong's, and afterwards went down to his house to him. When I came there, he met me on horseback, and came up civilly and kindly to me. I thought fit to give him a caution, having received such orders from my Lady. "My Lord, (said I) I am sorry I am forced to come upon such an account as this, to be a guard over your words and actions, and I am very much troubled that this unfortunate thing has happened, and you are reputed to be the occasion of it." Says he, "I do own, Craven, I have done a very ill thing; but that is past, I cannot help that now; but the thing that is to be thought on is, what is to be done for the future." My Lord, (said I) the best way, if I may give you my advice, were to send her home again, before any report be spread abroad of the business." "How can that be, (says he) I do not know where she is, but I have had a letter from her, as I told my Lady, I did believe I should find a letter here when I came down. I will shew you the letter," which he did. "My Lord, (said I) this letter will be thought as of your own penning before you came out of town." "I cannot tell what they will think, (said he) but here it is." Said I, "My Lord, I have a great respect for your Lordship, and do very much desire, for your own reputation and honour, as well as theirs, it may be made up in some way before it be too public." We were discoursing of this. "How shall that be done," says my Lord Grey. "My Lord, (said I) if you will consent to this, to send her over into France to Calais or Diep, we will there find somebody that will help her into a nunnery; and when

when she is there, she may write to her mother, that she found she had an intention to marry her to a match she could not by any means approve or like of, and therefore she went away to prevent her being forced to it; and this would be as plausible a thing as any in the world. And when that letter should come, my Lady Berkeley should shew it about to her friends; nay more, she should go over herself to fetch her back again, that she might receive her into her house with honour." He said, "That was a very plausible thing, and he would do it, if he could tell where she was; but her letter to him was, that she was gone from her father, but she did not think fit to let him know where she was, for fear he should deliver her up again." Then my Lord Grey asked me in what condition they were all at my Lord Berkeley's about it. Said I, "They are in such a confusion and trouble they are all mad almost." Says he, "How does my Lord bear it?" Said I, "He is so afflicted that it will go near to break his heart." Says he, "He is indeed one of the men in the world that is to be pitied; she pitied him very much, but for her mother she doth not care." One day when we went out a shooting, as we did several days together; "Mr. Craven, (says he), I will tell you the whole intrigue between my Lady Harriet and I. I have had a great affection for her ever since she was a child, and have always been taking great delight in her company; and keeping her company so often till she grew up, my passion grew to that height, that I could stifle it no longer, but I was forced to tell her of it, and then I could not speak to her of it, but writ. But withal I begged her to take no notice of it to any body, for if she did, it would ruin us both. She was very angry to hear of it, and neither by writing nor speaking could I perceive she had any affection for me again, till the Parliament sat at Oxford; and then I did pursue my love

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and my amours, and at last, she one day told me, said she, "I have now considered of it, and if you do not leave writing or speaking to me of this matter, the very first time you write or speak to me again I will tell my father and mother of it." "That struck him so, (he said), that he did not know almost what to say or what to do, and he walked up and down just like a ghost; but he hid it as well as he could, that it should not be perceived by others. But that Parliament being quickly dissolved, he did intend to go down to Suffex to his house there, being he found she was resolved against admitting his affection, and he would stay there several years, till he had weaned himself of his passion, and by that time she would be disposed of otherwise, and he might be at ease. And he hiding his trouble as much as he could from my Lord Berkeley and my Lady, forbore to speak to her, but only when he saw her he could not forbear looking earnestly upon her and being troubled. My Lord Berkeley, not knowing any thing of it, asked him to go to London with us and not to Suffex; he was very much persuaded by my Lord and my Lady to it; and at last, my Lady Harriett Berkeley came to him, and told him, (said she) You are very much persuaded by my father and mother to go to London and not to Up-Park, why do not you go with them?" "Madam, (says he) you have stopped my journey to London, you have hindered my going with them, for I will rather suffer any thing than render you any disturbance, and if I go to London with you, I shall not be able to contain myself; but if I go to Suffex, I alone shall have the trouble of it. But one day, when my Lord of Aylesbury was leading my Lady Berkeley, and my Lord Grey was leading my Lady Harriett, she took my Lord Grey's hand and squeezed it against her breast, and there was the first time he perceived she loved him again; and then she

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she told him he should go to London with them; and he did go, and from that time, for a twelvemonth before she went away, he did see her frequently, almost every night, pursuing his amour in writing and speaking, to her as often as he could have opportunity. And though my Lady Berkeley put a French-woman to lie with her, yet she did use to rise from the French-woman, and he did use to see her. And one day, (says he) do not you remember you came to the chamber door, and she was angry at your coming, and that the door was not bolted, and if you had come in, you had found me there."

Serj. *Jefferies*. Do you remember any such thing?

Craven. I do not, unless it were at Durdants. "And, (says he) you cannot imagine what I have suffered to come to see her. I have been two days locked up in her closet without meat or drink, but only some sweetmeats."

Serj. *Jefferies*. What did he say of his making addresses to other ladies to take off his passion?

Craven. He said, "He did all he could, for he would fain have avoided bringing such an infamy upon his own family and his Lady's, and he did endeavour to cool his passion, by making love to two other ladies, whom he courted, and enjoyed both of them, but yet all did signify nothing, he could not subdue it."

Att. Gen. Pray tell us what terms he insisted upon, for his parting with her, and what he said the law was in the case?

Craven. I told him, "my Lord, besides the dishonour you bring upon yourself and two noble families, you should do all that in you lies, to avoid the punishment that will come upon you for it by law." "Oh, (says he) you mistake yourself in that, for you must think I have considered of all that before; they cannot do any thing in law against me for it; let them examine the

case of Mrs. Heneage and my Lord Cavendish."

Att. Gen. What, did he say he would not part with her but upon terms?

Craven. He said, "I cannot persuade her, and I will not betray her." "Truly, (said I) my Lord, you had better betray her, and when she comes to be sensible of her own good, she will thank you for it. Then he owned he had her in his power, but would not part with her never to see her again."

Att. Gen. What were the terms he stood upon?

Craven. My Lady Berkeley sent me to the Coffee-house, and desired me to ask him, "If he would give her an answer to what she had met him at my Lord Chief Justices's about." My Lord told me, "He did not approve of sending her to the place proposed, but he would send her to his own sister, his brothe-in-law Mr. Nevil's." I told my Lady of it, who said, "if he did state the case right to Mr. Nevil, she was sure he would not receive her, nor let him come to her if he did." After that, Mr. Petit was proposed, so he might visit her. But he did say, "If that be the design, that they would have her from me, and I not come at her when I please, they shall never see her while they live, nor will I ever deliver her."

Serj. *Jefferies*. We rest here, to know what they on the other hand say to it, and we think this foul act is fully proved.

Lord *Cavendish*. My Lord Chief Justice, I desire to be heard one word in this matter. This gentleman, Mr. Craven, that was last examined, has been pleased to tell a very long improbable story in itself, and amongst other things that he has said, he has been pleased to make use of my name impertinently enough; for he speaks of a case that that noble Lord, he says, was pleased to mention to him. If he did mention that case to him, and did name my name,

name, he also mentions the case of two Ladies, he says my Lord was concerned with. I desire to know how he came to name my name, and not name the two Ladies he speaks of that that noble Lord made his courtship to and enjoyed?

L. J. C. My Lord Cavendish, I could have wished he had not named your Lordship, because it was not at all to the purpose.

Lord Cavendish. My Lord, I am not concerned at it at all, more than at the impertinency of his using my name.

L. J. C. I could have wished indeed, the gentleman had spared your Lordship's name.

Lord Cavendish. I desire to know why my name was mentioned more than the two Ladies names?

Craven. My Lord Grey did not mention the two Ladies names to me.

Lord Grey. No, nor my Lord Cavendish's neither, it is all a lie.

Lord Cavendish. I will believe my Lord Grey's word, more than I will his oath.

L. C. J. That your Lordship may do if you please, but we must not do so here. Come, what say you to it on the other side?

Williams. May it please your Lordship, and you gentlemen of the jury, I am of counsel in this case for my Lord Grey and the other defendants. And that we may come closely to the question; I desire I may first state the question before you upon this information, and then you will the better judge how far the evidence that has been given, is pertinent to the issue that you gentlemen are to try. The parts of the information are these: That my Lord Grey and the rest of these defendants, should conspire together to ruin and destroy this young Lady, and in the execution thereof, to bring this their conspiracy to effect, they did often solicit and intice her to commit adultery with my Lord Grey; and in prosecution of these their ill purposes and de-

signs, she was by force and arms taken away from the custody and tuition of the Earl of Berkeley her father, and being so taken away, my Lord Grey and the rest of them, did procure her to live scandalously with my Lord Grey, in whoredom and adultery. These are the parts of the charge, and the question is, whether we are guilty of it. For the evidence, I dare presume to say, that they have not made any direct proof of the matter charged. On the other side, they have, I do agree, offered something conjectural, upon which a man may imagine and think what he will; but how far you are to conclude the defendants guilty, out of those presumptions, must be left to you, I know you will very well consider of it. It is plain, we are in a very tender case; it is a case of honour on all sides, and I have often heard it, and always believed it, "That persons of honour and quality in the world, would rather lose their lives than their honour." And I believe it is the opinion of my client, my Lord Grey, as well as of the prosecutors in this information. And therefore, you gentlemen, I doubt not, will expect to have a clear evidence to convict him of this crime. And it is not only his honour is concerned, but that also of another great, illustrious and noble family, to which he is by marriage allied. So that the acquitting of my Lord Grey of this matter, doth, in a great measure, acquit the other family of so great a scandal. For that will falsify the information, and by your verdict you will remove those stains, that else may stick on both sides. We are equally between the two families, and your consideration will be, whether you will lay a stain upon both of them, or acquit them both. Now there has been no proof against my Lord Grey, of any one point in the information.—

L. C. J. No? Sure you are much mistaken, it is a direct proof against my Lord Grey.

Grey, I must tell the jury so, and therefore apply your defence to it as you can.

Williams. Truly, my Lord, I hope it is not, and our case is best stated, by laying open the truth of the fact, and then the matter will plainly appear. I cannot go about to justify the passion and the folly, for I may well call it so, of my Lord Grey and this young Lady in this case. It is misfortunate enough to be accused of a thing of that nature, and it may be a great deal worse to be convicted. I shall agree there have been those transactions between them, that it may be, we cannot justify in strictness every thing that my Lord Grey has done. But, yet we say he is not guilty of this information. We do agree, there has been an extraordinary passion, nay, I must say, a very unjustifiable one, between this Lady and my Lord Grey: But to conclude out of that, that because there was such an unreasonable, unjustifiable, extraordinary affection between them, therefore we must infer and conclude him guilty of this information, is a very forced and unreasonable construction; for there are degrees in love, and we must not conclude the worst thing a man can be guilty of, because he is guilty of some degree. Then, to come home to the case of my Lord Grey, we shall prove, and give your Lordship and the jury undeniable satisfaction, that my Lord Grey is so far from having inveigled away this young Lady, or being any way instrumental to the conveying her away, that he used all means he could to have prevented any thing of that nature before, by discovering to my Lady Berkeley her mother, my Lady Arabella, and my Lady Lucy, her sisters, all persons of great honour, and her nearest relations, that she did intend to go away, by warning them, and giving them full notice, that there might be such an intention in the young Lady. We shall prove likewise that no man in the world could do

more, when she was gone, to retrieve her. We shall make it out by undeniable circumstances, proved even by their own witnesses. It happened that my Lord Berkeley and his family withdrew to a country-house of his near Epsom, in your county, gentlemen. My Lady had some jealousy, as she has been pleased to testify, that there might be some extraordinary passion between my Lord Grey and the young Lady; having discovered it by some letters, as she hath given evidence. My Lord Grey acquainted her with his suspicion, that she intended to go away, and was so just, that he did not conceal any one thing that he knew; yea, to acquit himself that he had no ill design himself, and if she did get away it was none of his fault, he produced a copy of a letter of admonition, which my Lord Grey had written to her: And when my Lady had heard his advice about it, and his counsel he gave her, she said, "her father could not have given her better counsel." This was so early as July; in the beginning of August, my Lord Berkeley going down to his country-house at Epsom, and the family removing thither. Then my Lord Grey was sick here in town; and in this sickness of his, there was a letter sent to my Lord Grey from his Lady, desiring him to come down to my Lord Berkeley's; but it seems he had been under some engagement to my Lady Berkeley, not to come without her leave, and having regard to his word past to my Lady, he would not do it. My Lady Berkeley, in a few days after, sent for him herself, and therein thanks him that he was so just to his word and honour, that he would not come down without her invitation. Upon Tuesday before this unhappy Lady went away from her father's house, my Lord Grey came to my Lord Berkeley's. When he came down, he was very kindly received by my Lord and my Lady. On the Thursday following my Lady Berkeley acquaints my Lord Grey, that

that this young Lady had a design to leave her father and mother's family, and run away. My Lord Grey was so frank with her, as to tell her: "Madam, I have long suspected such a thing, as I have told you; but, Madam, your daughter Harriett is all day in your eye, you may lock her up at night, and secure her if you please." This was a timely caution given before she made her escape. On the Friday following, comes a letter from an unknown hand to my Lady Berkeley, that intimated, "That except they had a great care of their daughter, and a strict eye over her, she and her father should not long enjoy her company." My Lady Berkeley shews this letter to my Lord Grey, says he, "Madam, this is no more than what I have often told you, I have given you some intimations already, and my thoughts and advice about it; and whoever it be that writ this letter, I am afraid her apprehensions of some ill usage may put her upon some such design." And he repeated it again, "Madam, let me caution and advise you, have her always in your eye, and lock her up safe at night." This was repeated over and over, to my Lady Lucy and my Lady Arabella. Thus it continued till Saturday, my Lord Grey resolved to go to his country-house at Up-Park, and took his leave of my Lord Berkeley and his family accordingly, and went that night to Guildford, and there he lay, and rose the next morning to go onwards of his journey, but was pursued, it seems, by my Lady Lucy. For she tells you, "When this young Lady had left her father's family, she immediately on the Sunday morning came to Guildford, and sent after my Lord, who was newly gone on his way, and was found in his way to his house in Sussex. Having received my Lady Lucy's commands, he returns to Guildford, and there he had the first notice given him of my Lady Harriett's escape; says he to my Lady Lucy, This is no more than

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I have fairly warned you of before; had you taken my counsel. Was she locked up? No; said she, she is gone away, and your Lordship must needs know where she is, and therefore pray get her to return home again. Says my Lord Grey, I assure you, I know nothing at all of it, and to give you all the satisfaction I can in the world, I did not only warn you of it before, but I shall be as industrious as any of you all, you shall find, to recover her again. For that purpose, I will see if she have crossed the river, or is gone any other way; and if I can make any discovery, by letter or any other way, I will send you word immediately, and I am so sincere with you, that if any letter come to your family for me, I give free liberty to my Lord and all his family to open them themselves, and see what is in them; and if I do receive any from her any other way, a true copy of it shall be sent; and more than all this, if my Lord be not satisfied with what I have said, let my Lord or my Lady send, and set what spy upon me and my actions they please. And it seems he was taken at his word, and they made choice of a very proper gentleman, and you heard what discoveries he has made, and how he has worded the matter. For first he makes my Lord Grey at one time a very subtle lover, full of all intrigues, and one that could conceal all within himself, and yet (when it would do him so much injury) so open, as absolutely to unbosom himself to one that was an absolute spy upon him and his actions, and tell him such things, as no man in the world sure is such a fool as to tell another in his circumstances. But that I leave to the jury (as my Lord Cavendish has said) to consider of the impertinency of his long story: When he had parted from my Lady Lucy he comes to London, and useth all the diligence he could to find her out. On Wednesday again he leaves London, when he could not find her, and goeth

to his own house: Upon Thursday this gentleman Mr. Craven comes thither to him. There he finds a letter from my Lady Harriett, and because he would be exact to his word, he keeps a copy of the letter, and sends the original of it to my Lord Berkeley's. Now no man will imagine, if he had such an intrigue with this Lady, as they would make the world believe, that he would ever have sent such a letter out of his custody, which would have been a colourable excuse for him. Nay, we do not rest here, but by the way we produce this letter to this gentleman, who it seems was our guardian, and told him moreover, here is my answer to this letter, and sends a copy of his answer with the letter from her to my Lady Berkeley. Then there comes a second letter, and he, according to his word, discovers that, and there is not one circumstance in all his carriage that doth accuse him. After this second letter was imparted to my Lord Berkeley's family, he continued a-while at Suffex, and afterwards when he returned to London he used all the means imaginable, for a person that was so near concerned, in point of relation, and in regard of his own reputation, to have found her out, but could not. These are the circumstances of my Lord Grey's particular interest in this matter, and when we have made out these circumstances, we hope the world will believe him not guilty. It seems the young Lady is now in court; she is so just, it seems, as to come to do my Lord right, and that one thing will knock all their conjectures on the head; for she best knows what has been done, and the jury will consider, whether this be imaginable, that my Lord Grey should conceal her all this while, and produce her now, when if any violence have been offered her, she may freely tell it. And as for the man that could tell so very readily this was the very Lady that came to his house, when she had so hooded and muffled

up herself, we must leave him and his credit to the jury. We shall therefore desire, when we come to the close of our evidence, that this young Lady may be here examined upon her oath, and then I hope the truth will come out.

Mr. Thompson. My Lord, because your Lordship seems to be somewhat satisfied that there is a direct proof of the matter charged against my Lord Grey, therefore I suppose it will not be amiss to open the fact, and in three words to state the charge, and the nature of their evidence to maintain it. —

L. C. J. Come, come, call your witnesses, and make out your defence.

Just. Dalton. If you can prove what Mr. Williams says, you do something, but do not think to make long speeches, go on to the evidence.

L. C. J. Pray, Mr. Thompson, do not you believe we want any of your help to recollect the evidence given, or to direct the jury about it, do you disprove it if you can.

Thompson. My Lord, the course of practice I always took to be so, to open and observe upon the evidence given, and then answer it. But I submit to your Lordship for that; you may do as you please.

Lord Grey. Then, my Lord, I desire I may speak something myself. Certainly, my Lord, no man ever lay under a more infamous accusation, than I now do; and therefore I hope your Lordship will pardon me, if I defend myself as well as I can from it; and undoubtedly, if in any case a man be allowed to speak for himself, it must be allowed to me in this. My honour lies here at stake, and if my life did so too, I am not, nor should be more concerned to save that, than I am to clear my reputation, which is and ought to be very dear to me. My Lord, were I guilty of the villanies that here are laid to my charge, I certainly should need no other punishment, I am sure,

sure, I could not have a worse, than the reflections of my own conscience for them, and I ought to be banished the society of mankind. My Lord, I must confess, I have been so unhappy (though it is more than they could else prove) as to have a very great kindness for this unfortunate young Lady, my Lady Harriett Berkeley; but yet, not so criminal a one as the witnesses that have been produced would have you to believe, nor as the information would insinuate. I do here protest, I was no way assisting to her escape, nor privy to it, nor have I ever at all since detained her from her father, though I have suffered a fortnight's close confinement and imprisonment for it; and all this I doubt not to make out to your Lordship's and the jury's satisfaction. I shall say no more of the justice of my cause, but endeavour to prove it; and, my Lord, this is that which I say to it. The evidence that has been given, consists most of such and such discourses that have been between the witnesses and myself, and those I shall give what answer is fit to be given to them. A negative, as your Lordship very well knows, is not to be proved. Particular discourses we have had, of the same nature as Mr. Williams has opened, about my cautioning them concerning her attempts to go away; and I shall appeal to my Lady Berkeley herself, whether that be not so. If my Lady Berkeley own it to be true, I hope that is very good proof. My Lord, about the time that they speak of, concerning the letter, which I take to be in June or July, I was sent for by my Lady Berkeley into her chamber; when I came there, my Lady told me there was a letter, which she said was designed to go from her daughter to me. I asked her, if she had read the contents of the letter, she said, No. I asked her, whether the direction of the letter were to me, she could not tell that. But my Lady had told me, her daughter had

given her the account of what had passed between us, that she was satisfied there was a correspondence of love between us. To remove all fears, I proffered to absent myself. I desire my Lady may answer whether this be not so.

L. C. J. That will be to intricate the business, to go on thus. Pray, my Lord, if you will ask any question of any body, tell them your counsel, and let them ask them, but to make long discourses all day is not to be permitted.

Lord Grey. My Lord, I will ask then my questions all together by and by. My Lady Berkeley going down with my Lord to Durdants, desired that my wife might go down with her, to which I readily consented. Soon after that, I fell sick and kept my bed a-while. When I was well again, and going into Suffex, I sent for my wife to town, and would not go fetch her, because I would keep my word with her Ladyship. My Lady Berkeley thereupon wrote me a letter, wherein she thanked me for not coming according to my promise, and commended my modesty in it; and said, There would be no apprehension of any ill from me, if I did come thither for a short time. And thereupon being invited by her Ladyship, to take her house in my way to Suffex, I did come down thither. And I urge this, to shew that there was no conspiracy or design of any such thing in me, for I had not gone to Durdants, if I had not been sent for, and so there was no design in my going. When I came thither it was the Tuesday, and on the Thursday, my Lady Berkeley did acquaint me, she was under great apprehensions and fears; and I asked her the reason of it. She told me, That she had been at some ease, her daughter having made a great submission to her, and promise of constant obedience, and that she would do all as she would have her, if she would but give her leave to go to town with her; but yet, for all this,

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one morning she puts on her hoods and scarfs, and was going away, and had done it, but that the French-woman and another prevented it. I told my Lady Berkeley then, Madam, said I, I have good reason to believe she may have some such intention. I did not give my reason at that time, but I shall by and by. But, said I, if she do go away, I cannot imagine but that it is possible she may send to me, and I will give your Ladyship notice as soon as ever I know; and though you seem to be satisfied, and to think your daughter secure here, yet you do not think her so indeed, and you must needs use her ill, or she would have no thoughts of going from you. For my part, if she do go away and come to me, I will shew it as I would death, and you have now fair warning, she is all day in your eye, pray be sure to lock her up safe at night. Upon Friday following comes a letter without a name to it, and Mr. Williams has opened to you the contents of the letter. She read the letter when her daughter was in the room, who asked what the letter was, and being denied to have any account of it, was in the greatest confusion in the world, and leaped and run down stairs like a mad thing, and my Lady herself was very much disturbed at it. When I saw the letter, Madam, said I, this letter ought to confirm you in the resolution of taking my advice; it can come from no body, but some one that is to assist in the executing of this design, but thinks it too dangerous to engage in, and gives you this warning to prevent it. You have sufficient caution given you to make you careful. Whereas, my Lord, if I had been in any sort of conspiracy of that nature, to take her away, my Lady Berkeley certainly should have been the last woman in the world that I would have communicated it to. My Lord, I went away from Durdants on the Saturday, and so to Guildford, where I lay that night,

and went on my journey the next morning, but was overtaken on the road, by a messenger from Lady Lucy, who was come to Guildford to speak with me; when I came back to her, she told me, my Lady Harriett was gone away that night, and they did believe I knew where she was. Said I, Madam, I have as great a share in this misfortune as any of you all, because of your suspicion; but sure you must have used her very ill, and make her do this; and you are much to blame, when you had all that warning from me; why did you not secure her, and lock her up as I advised you? Said she, she was locked up, but the key was left in the door. Upon this I went to London, and I had appointed my Lady Lucy to meet her on Monday morning, to give an account what I could learn; but I told her, that I had heard nothing of her, nor is there any proof that I did see her at any time, till I owned it before your Lordship at your chamber. She seemed not to believe me when I told her so. Madam, said I, it is certainly true; and to convince you that I have no hand in this matter, I will go immediately into Sussex, and there I will stay as long as you will have me; and if you please to go yourself with me, or send any body else, to observe what I do. She thought it not fit for herself to go with me: But my Lady Berkeley and she afterwards pitched upon Mr. Craven, who had been a long time a servant in the family, and I agreed with my Lady in that, to have him, and receive him as a spy upon me. Discouraging with my Lady Lucy, said I, Madam, Now I will tell you the reason, which I forbore to tell my Lady Berkeley, why I had good ground to suspect my Lady Harriett had a design to go away, and it was this; My Lady Harriett came to me one day, about six weeks or more ago, in the Court-yard at St. John's, and says she to me, I am used like a dog, I live the life of a slave here,

here, I can endure it no longer; by the eternal God that made me, I will not be alive long, unless I can set myself at liberty. This I said to my Lady Lucy; and these, said I, were reasons enough for me to warn you to look well after her. I did, according to agreement, go into Sussex immediately, and I then told my Lady Lucy, I believed I might have a letter from my Lady Harriett, by the Wednesday night's post; because, said I, she cannot write sooner than that, and if I have, I will send you word. When I was there, Mr. Craven came the next day to my house; and as soon as he came; said I, Here is a letter I have received from my Lady Harriett, and if you will, you may take a copy of it. I took a copy of it myself, and sent the original of it to my Lady Lucy, though they have not thought fit to produce the letter now in court, that your Lordship and the jury might see it. But here is mine, which was the first account what was become of her after she went away, that I received, except what account I had from my Lady Lucy at Guildford; and this will shew to all the world, that I was not so much privy to her going away, as they say I was. I had denied to assist her in it, when she complained to me of her ill usage; and when she attempted to go away before, I, upon my Lady's telling me of it, gave her sufficient caution. And for the truth of all this, I appeal to those very witnesses that have been produced against me. When I had shewn this letter to Mr. Craven, I sent it away by a servant of my own, to my Lord Berkeley's, and writ to my Lady Lucy, and desired her to pen whatever answer she should think fit to send. My Lady Lucy did write to me back again, and told me the substance of what I was to write, but the penning of it she did leave to me, for she believed I would do it effectually. I did write an answer to my Lady Harriett's letter, and that answer I

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shewed to Mr. Craven, and asked him if it were sufficient, and he seemed to approve of it. The Lady herself is in court, I know not whether she can give an account of the letter, I suppose she can tell you what an one it was. I had afterwards another letter from her in answer to mine, and that I have here, and it will appear by both of those letters, whether I had any interest in her going away. Though perhaps that would not have been such a crime neither, and yet I think withal, that there is not a tittle of proof that I had any hand in it, not one proof of any circumstance like it. And if there be any crime, it must be the taking of her away, to such an intent and purpose as is charged in the information. Before I came to town, I was sent for about some other business, yet I would not come till I had my Lady's consent; for I sent her word, my Lady Harriett writ in her letter, that she was going beyond sea, and if I went to London I might prevent it, but I would not go without my Lady's, or Mr. Craven's consent and approbation. When I came to town, I was one day at the coffee-house in Covent-Garden, I was then sent to by this Lady, who was in an hackney-coach at the door, and when I came to the coach-side to her, she gave me a tedious history of her ill-usage at home, which made her come away. And when your Lordship's warrants were out to search for her, I came up to your Lordship, and I dare appeal to your Lordship, whether I did not acquaint you, that she only sought for protection, and was willing to return home, so she should be satisfied, she should not be ill treated again. You then told me, I could not protect her against her father. I then told your Lordship and my Lady Berkeley, she was not in my house, nor in my custody. They replied, she was in my power; but how could she be in my power? When she was not in my custody, nor in my lodging.

6 R.

But.

But my crime was, that I knew where she was. And if I do deserve punishment for keeping my word and faith with her, which I gave her in a letter, upon her importunity not to betray her, I must submit to it, I could not in honour do otherwise. My Lord, I desire this first letter may be read, which was first sent by my Lady Harriett to me.

L. C. J. Surely, my Lord, for all your long discourse, you cannot but apprehend yourself mistaken, when you say there is no crime charged in the information, but the taking her away to such an intent and purpose. Surely there are other things besides that. And what you speak, if not proved, your Lordships knows, must pass for nothing.

Williams. My Lord, your Lordship has made a right distinction between discourses and proofs. Therefore discourses between strangers and third persons, are not to be stood upon, but the proofs are; and all the evidence together must be left to the jury, to consider what is material and pertinent, and what not. We shall therefore go on to our evidence; and shall begin with my Lady Berkeley first, and ask her Ladyship some questions. And we desire to know whether she hath seen this letter?

L. C. J. But take notice, the letter you propose, we cannot read it.

Williams. But, my Lord, it was agreed between my Lady Lucy and my Lord Grey, that if he received any letters from my Lady Harriett, he should communicate them to my Lady Berkeley, and this letter coming to him, he first shews it to Craven, this man that was thus set as a spy upon him, and after sent it to my Lady Lucy, and whatsoever answer they would have sent, was promised should be, and accordingly was first shewn to Craven, and then sent. If this were the agreement, and these letters were thus written, then sure we may read them,

L. C. J. You may ask my Lady Berkeley any questions, but must not read any such letters.

Serj. Jefferies. Pray, Mr. Williams, let us go according to the course of law, and give no evidence, but what is fit to be given as evidence.

Williams. Then thus, Madam, pray can you remember the discourse that past between my Lord Grey and your Ladyship in June, concerning your daughter and him?

Lady Berkeley. Where?

Williams. At St. John's.

Lady Berkeley. I do not well know what discourse you mean; but any particular discourse that was there I will answer to.

Williams. That discourse that past between you the first time that you acquainted my Lord Grey that you suspected there was too much familiarity between him and your daughter?

Lady Berkeley. The first time, do you say?

Williams. Yes, Madam, I think you were pleased to say, that upon your first discovery, you sent for him and talked with him.

Lady Berkeley. I did not say upon my first discovery, but when I had discovered it. For I would be very punctual to the truth in my evidence.

Williams. You say, your Ladyship had some discourse with him in June.

Lady Berkeley. I think it was in June.

Williams. Pray, Madam, can you remember what my Lord Grey promised your Ladyship then?

Lady Berkeley. He told me then, he would obey me in any thing, even if I would banish him my house.

Williams. Was there any letter then produced by your Ladyship or my Lord Grey?

Lady Berkeley. Of what concern?

Williams. Any letter that related to your daughter?

Lady

Lady Berkeley. No, but I told him of a letter that was found, that she had writ to him.

Wil. Madam, pray, have you that letter or any copy of it?

Lady Berkeley. No, it was torn to pieces, I can bring the pieces, I believe, if there were occasion.

Thompson. Your Ladyship read it, I suppose?

Lady Berkeley. No, my daughter Bell read it, and tore it in pieces.

Wil. Was there any discourse between your Ladyship and my Lord Grey, about any other letter?

Lady Berkeley. Not at that time.

Wil. Was there at any other time?

Lady Berkeley. Yes, at the Charter-house at my Lord's house, one day my Lord Grey desired me to walk into the gallery, for he had something to communicate to me, and the discourse that past between us then was this, he shewed me there a letter of the passionate love he had for her, with some good counsel in it.

Wil. Did your Ladyship approve of the counsel he gave her?

Lady Berkeley. Never when there was so much love and passion in the letter.

Wil. Pray, Madam, recollect yourself, were you not pleased to like of that letter?

Lady Berkeley. I could never like of the passionate expressions in it: there might be something in it well said enough, but with the greatest expressions of passion and love; inasmuch, that he himself said of it, Madam, I'm ashamed of that part, and would have had me overlooked it.

Wil. Did your Ladyship say, her father could not give her better advice?

Lady Berkeley. Not that I know of.

Thompson. Pray, Madam, did you ever say so?

Lady Berkeley. Surely I did not; for I could not but think he could give her a great deal better advice.

Wil. Does your Ladyship, pray, Madam, remember any discourse between my Lord Grey and you, upon the Thursday before your daughter went away?

Lady Berkeley. I cannot tell for Thursday.

Wil. Does your Ladyship remember the letter you received from an unknown hand?

Lady Berkeley. Yes, I do.

Wil. Did you shew that letter, or read it to my Lord Grey?

Lady Berkeley. My Lord Grey came up to me, and seemed to be very careful of my concerns, Madam, said he, pray take care, for I saw a letter directed to your Ladyship, without the mark of the Post, or the Penny-post upon it. And, said he, I give you this caution about it before it comes to you, because my Lord was by; I arose up and went to the other side of the room, and my Lord Grey followed me, and when I took up the letter, I saw something that I thought to be very odd and unusual in his carriage, as if he were in great disorder, as I was; and I went to my chamber, thither my Lord Grey followed me, and that letter he would see, because, he said, it had put me in some disorder, I told him he should not see it as then. I sent for my daughter Lucy into my closet, and shewed it her, and she was in great disorder about it too.

Williams. Pray, Madam, can you remember whether that letter did caution you "To look well to your daughter, or else you were not like to have her company long?"

Lady Berkeley. The letter did say some such thing, "I must look after my daughter, or I should lose her."

Thompson. And this was on the Friday before she left your Ladyship, Madam, was it not?

Lady Berkeley. Yes, it was so, I think.

Williams. Pray, Madam, what did my Lord Grey say upon that?

Lady Berkeley. He was extremely earnest to see the letter, "Because, (said he) it had
so

so disordered me ;” and at last I was persuaded to let him see the letter ; he turned the letter upside-down, and looked on the subscription. “ Madam, (says he) Is this all that disorders you so much, I am used to have many such letters by the penny-post ; this is nothing but to amuse you. It is a very silly letter, and written by some woman, as you may see by the spelling.”

Wil. Did he caution you to lock up your daughter a nights to secure her ?

Lady Berkeley. Not one word upon this letter ; but the next morning again talking about this letter, he said, it was a foolish letter, and what should I trouble myself about it for ?

Wil. But, Madam, had you any caution given you by my Lord Grey about this time, to take care of your daughter ?

Lady Berkeley. Not that I remember, to lock her up.

Wil. What then did he say ?

Lady Berkeley. I will tell you what he said to me once or twice. Madam, whatever you do, do not make her desperate. I asked him what he meant by that word ? Said he, It is not necessary to explain that word to you, I meant nothing but do not use her ill.” Now, my Lord, I was so far from that, that I used her with all the tenderness of a mother, like a sister rather than a daughter ; nay, he himself has confessed she was better used than he imagined she was.

Wil. Did your Ladyship, at any time, intimate to my Lord Grey, that you had any apprehensions of her intending to go away ?

Lady Berkeley. I did tell him, that when I was at London, my woman that lay with her, did rise about eight o'clock, and left my daughter alone in the room, and when she came up again, my daughter had put on her hood and scarf, and her petticoat was pinned up, as ready to go out, and the woman being affrighted at this, called up my

other daughter and so prevented it ; and after came and told me she had pinned up her petticoat thus about her, and she did not know what she meant to do, Upon this I went to my daughter, and, said I, What is the reason that you pinned up your petticoat, and put on your hood and scarf ? Says she, I had not my scarf on. But says my woman to me, when I came into the room, you thrust something into your gown. It is true, I did so, Madam, says she, but it was upon this account, I had got a sheet of paper, upon which I intended to write, and seeing her come in, I put it in my gown.

Wil. Pray, Madam, did my Lord Grey at any time caution your Ladyship about your daughter, to lock her up, or tell you his opinion, that he thought she would leave you ?

Lady Berkeley. I cannot positively say that ; but he used to say to me, Madam, do not make her desperate ; I do not know that ever he advised me, as to the locking of her up.

Thompson. Did he desire you, Madam, to take care that she did not go away from you ?

Lady Berkeley. I do not remember it.

Wil. Pray, Madam, can you tell who brought that letter from an unknown hand to you at Durdants ?

Lady Berkeley. It came down with other letters to my Lord's Steward.

Serj. Jefferies. But your Ladyship says my Lord Grey was very solicitous about that letter.

Lady Berkeley. Yes, Sir, he came to me, and very earnestly cautioned me about it. For, said he, I see there is neither the General-Post nor the Penny-Post mark upon it. And knowing himself guilty of what he was guilty of, he might be afraid lest my Lord should see it, and so his business come out.

Wil.

Wil. Pray, my Lady Lucy, do you remember that ever my Lord Grey advised the locking her up?

Lady Lucy. Upon discoursing of the letter that came from an unknown hand, my mother said to my Lord Grey, "sure that is such a horrid thing that it can never be done; my Lord Grey might then reply and say, 'If you fear it you may lock her up; but I do deny that ever I heard him say any thing to caution my mother, that he thought she was going.'"

Wil. Madam, the question I ask your Ladyship is, whether my Lord Grey did or no direct or advise to lock her up?

Lady Lucy. Upon my mother's discourse concerning the unknown letter, and how sad a thing that would be, he might say, that if she feared that, she might lock her up; but he never did say that he did think she would go.

Thompson. Pray, when was this, Madam, how long before she left the family?

Lady Lucy. The day before.

Wil. Then, Madam, for the discourse you had with him at Guildford, what said he, he would do?

Lady Lucy. It was at London; that he passed his word to go down into the country.

Wil. What did he promise you to do there, Madam?

Lady Lucy. He said he would not stir from Up-Park till he heard from my father.

Wil. What did my Lord say to you, Madam, about the letters he should receive?

Lady Lucy. He did say he would send us all the letters that came to him from her, and if any came to our hands we were to open them.

Wil. Was my Lord Grey willing to receive a spy, Madam, upon him?

Lady Lucy. Yes, he was.

Wil. Was there any letter sent to your Ladyship from my Lord Grey?

Lady Lucy. Yes, there was a letter with

one in it from my Lady Harriett.

Wil. Have you those letters by you, Madam?

Lady Lucy. No, I have neither of them here.

Wil. Can you tell the contents of it?

Lady Lucy. I have told them already.

Wil. Pray, Madam, will you please to recollect yourself a little, when you were at Guildford, and told my Lord Grey that my Lady Harriet was gone away, did not my Lord tell you, "You had not observed the directions and advice he gave about her, to lock her up," and did not you then answer him, "Yes, the door was locked, but the key was left in?"

Lady Lucy. I did reply, "The woman had not locked it carefully enough after her."

Wil. Did you not say, "That the door was locked, but the key was left in?"

Lady Lucy. I do not remember a word of that.

Wil. Madam, will you please to cast your eye upon that letter, and see if that paper be a true copy of the letter you had?

L. C. J. What paper is that you offer, Mr. Williams?

Wil. It is a letter from the young Lady, to my Lord Grey.

L. C. J. You know no use can be made of that paper, why do you offer it? It is contended that my Lord had the Lady in his power, and then would not she write any thing?

Wil. Then, my Lord, there is the young Lady herself, we desire she may be examined.

Serj. Jefferies. But before we part with my Lady Lucy; if you have done, we desire to ask her a question; it is here insinuated, as if there had been some hardship put upon this young Lady, or some ill usage in her father's family; now for the honour of that noble family, I would have that point cleared, and therefore, pray, Madam, did you ever observe any unkindness,

any severity, or harsh usage, that was used to this Lady, by my Lord, or my Lady at any time?

Lady Lucy. So far from that, that all of us had a jealousy that she was loved best.

Serj. Jefferies. Pray take notice of that, gentlemen.

L. C. J. Pray, Madam, let me ask you one question. After my Lady had discovered this evil affection between my Lord Grey and this young Lady, did she then put any indecent severities upon her, or use her very hardly?

Lady Lucy. My Lord, I came out of France but two days before she went away. I saw no such thing.

Wil. We ask her about my Lord Grey, and you ask her about a third person.

Serj. Jefferies. Oh good Mr. Williams, we know why we ask her that question. It is an extraordinary case. Pray my Lady Arabella, will you answer the same question?

L. C. J. Ay, Madam, pray let me ask you, after this ill business between my Lord and her was discovered, did my Lady Berkeley (I cannot say my Lord, for he knew nothing of the matter till she was gone away) use her ill or unkindly?

Lady Arabella. No, no, my Lord, no mother in the world could be more indulgent and kind. She did indeed find it necessary to have a stricter eye over her, and she did put a woman about her to look after her, and did not permit her to write any letters. She had, or expressed a greater kindness for her, than any of us all besides.

Lady Berkeley. Ay, and that my Lord Grey knows to be true.

L. C. J. No, no, when my Lord Grey was in his passion, he might say so, but he has no proof to shew of it.

Serj. Jefferies. My Lady Lucy and my Lady Arabella, what person did you fear should take her away, pray?

Lady Arabella. We were not afraid of

any body but my Lord Grey.

Lady Lucy. There was no reason for fear of any body but him.

Williams. My Lord, there is the young Lady, we desire she may be sworn.

Att. Gen. We oppose it, Sir, and have very good reason so to do, and we think it is time to do it now, if ever.

L. C. J. Why should she not be sworn, Mr. Attorney?

Just. Dolbin. If the Lady her self have the confidence to be sworn, I see no reason why she should not.

Att. Gen. This case, my Lord, is in the nature of a ravishment of ward, for it is for taking a young lady out of the tuition and custody of her father, who is her guardian by nature, and it is apparent in the proofs, she is highly criminal in this very matter herself, in consenting to go away in such a manner, and to such an evil purpose; and now she comes to excuse one, that is not only a partaker in her fault, but the first seducer. Now, my Lord, when we have proved this matter of love upon her, that is laid in the information, sure she cannot be a witness for them, she would be a witness to excuse herself.

L. C. J. Mr. Attorney, I do think truly, that notwithstanding what you say, she may be a witness, being no party to the information. But withal, I think there is very little credit to be given to what she says.

Williams. Sure these gentlemen forget themselves much in offering to hinder or oppose one's being a witness, that is no party in the cause.

Serj. Jefferies. Truly, my Lord, we would prevent perjury if we could.

[Then she was sworn.]

L. C. J. Brother Jefferies, we cannot oppose it, if they will press it, and she consent, but I tell you what I think of it.

Williams. If she be sworn, my Lord, we would ask her a question or two. Madam, we would desire your Ladyship to answer whether

whether my Lord Grey had any hand in your escape?

Lady Henrietta. No, Sir.

Just. Dolbin. You are upon your oath, Madam, have a care what you say, consider with yourself.

Lady Hen. Yes, I know I am upon my oath, and I do upon my oath say it.

Wil. Did my Lord Grey advise you to it?

Lady Hen. No, I had no advice from him, nor any body about him, nor did he know any thing of it, it was all my own design.

Serj. Jefferies. Madam, I would ask you this question, and pray consider well before you answer it. Did you see my Lord Grey on the Sunday after you went away from your father's?

Lady Hen. No, I did not.

Serj. Jefferies. Did you see him on Monday?

Lady Hen. No.

Serj. Jefferies. Did you on Tuesday?

Lady Hen. No.

Serj. Jefferies. Did you on Wednesday?

Lady Hen. No.

Serj. Jefferies. Good God! Pray, Madam, how long afterwards was it that you saw him?

Lady Hen. Sir, it was a great while after.

Wil. How many days or weeks after was it?

Lady Hen. Sir, I cannot tell.

Serj. Jefferies. As near as you can, Madam, when was it?

Lady Hen. I can remember the first place that I saw him at after, but the time exactly I cannot.

Wil. Where was that, Madam?

Lady Hen. It was in a hackney coach.

Wil. That was the time, I suppose, that you sent for him out of the Coffee-house in Covent-Garden?

Lady Hen. Yes, I did so.

Wil. Pray, Madam, did you write any

letter to my Lord Grey after your going away?

Lady Hen. Yes, I did, by the next Post.

Wil. When did you write that letter, Madam?

Lady Hen. I did write it upon the Tuesday after I came away. I hope that is no offence.

L. J. C. Is it not? You should have writ to somebody else sure.

Lady Hen. I thought him the fittest person for me to write to, and I did not imagine it would be any ways scandalous for him, he being the nearest relation I had in the world, except my own brother, that could protect me.

Wil. Had you any answer from my Lord Grey to that matter, Madam?

Lady Hen. Yes, and a very harsh letter it was.

Wil. Did you write him any other letter?

Lady Hen. Yes, but I received no answer of it at all.

Thompson. Pray, Madam, did my Lord Grey, at any time, persuade you to return to your father's?

Lady Hen. Yes, he did so several times.

Serj. Jefferies. Pray, Madam, do you know Charnock, that was my Lord Grey's gentleman?

Lady Hen. Yes, I do.

Serj. Jefferies. Upon your oath, did not he carry you away from Durdant's?

Lady Hen. No.

Serj. Jefferies. Nor did not his wife assist you in it?

Lady Hen. No.

Serj. Jefferies. Nor was she not with you on the Sunday morning?

Lady Henrietta. No, nor was not with me.

Att. Gen. Were you not at Mrs. Hilton's then, Madam?

Lady Henrietta. No.

Att. Gen. Were you at Patten's?

Lady Henrietta. No.

Sol. Gen. Nor at Jones's?

Lady

Lady Henrietta. No, nor at Jones's upon my oath.

Att. Gen. Pray who did come with you from Durdant's?

Lady Henrietta. I shall not give any account of that, for I will not betray any body for their kindness to me.

Wallop. If it be no body in the information, she is not bound to tell who it was.

Lady Henrietta. If I have vowed to them before, not to discover, I will not break my vow to them.

Just. Dolbin. If they ask you of any body in the information, you have heard their names, you must tell if it were any of them, but you are not bound to tell if it were any one else.

Lady Henrietta. No, it was none of them. I went away upon another account.

L. C. J. If you have no further questions to ask her, pray, Madam, sit down again.

Lady Henrietta. Will you not give me leave to tell the reason why I left my father's house?

Just. Dolbin. If they will ask you it they may. You are their witness.

Williams. No, my Lord, we do not think fit to ask her any such question; she acquits us and that is enough.

Lady Henrietta. But I desire to tell it myself.

L. C. J. Truly, I see no reason to permit it, except we saw you were a more indifferent person to give evidence than we find you.

Lady Henrietta. Will you not give me leave to speak for myself?

Just. Dolbin. My Lord, let her speak what she has a mind to, the jury are gentlemen of discretion enough, to regard it no more than they ought. But Madam, for God's sake, consider you are upon your oath; and do not add wilful perjury to your other faults.

Lady Henrietta. I have been very much reflected upon here to-day, and my repu-

tation suffers much by the censure of the world, and therefore—

L. C. J. You have injured your own reputation, and prostrated both your body and your honour, and are not to be believed.

Just. Jones. You are, Madam, to answer only such questions as are asked you pertinent to the issue that the jury are to try, and if the counsel will ask you no questions, you are not to tell any story of yourself.

Ireton. My Lord, as to the evidence of Patten, the case is quite otherwise than they would represent it to be, about Charnock's coming thither for lodgings, for Mrs. Patten is a midwife, and used to lay Mrs. Charnock, and it was for her to ly-in at Patten's house, because it would be inconvenient to ly-in at my Lord Grey's.

L. C. J. What does that signify? but prove what you can.

Thompson. Where is Mrs. Patten, they would not produce her, because they knew it was against them.

[She appearing was sworn.]

L. C. J. Well, what do you ask of this woman, now?

Ireton. I would ask her, my Lord, whether there were any lodgings bespoke in your house against September?

Mrs. Patten. I know nothing of that.

Ireton. Was there any body in June or July at your house to bespeak lodgings?

Mrs. Patten. I cannot tell the month nor the day.

Thompson. Pray mistress speak what you do know.

Mrs. Patten. Mr. Charnock and his wife did come to my house last summer.

Wil. What was their business?

Mrs. Patten. For lodgings.

Thompson. Did they tell you who they were for? did they talk about lying-in?

Mrs. Patten. They were only for his wife.

Ireton.

Ireton. Did he tell you what time he should come?

Mrs. Patten. He did tell me they were not fit to come into yet, but they might at such a time, but she did not know her own reckoning; but they were not taken.

Ireton. Are not you a midwife?

Mrs. Patten. I was Mrs. Charnock's.

L. C. J. What is that to this purpose?

Serj. Jefferies. Now you are sweetly brought to bed.

Ireton. Pray, woman, will you tell what they said to you?

Mrs. Patten. Mr. Charnock and his wife came to our house for lodgings. I asked her who they were for, she said they were for a gentlewoman. I asked her who she was. Says she, For my self to lie-in here. Said I, how comes that about? Says she, about the time that I reckon, my Lord's family will be in town, and I find it not convenient to lie-in at our own house, then my father and mother have sent for me into the country, to lie-in there, but I cannot think of going thither, because of changing my midwife. Then, said I, truly, Mrs. Charnock, any thing in my house is at your service. Said she, I think it convenient rather to be here than to go into the country, but I do not desire that my Lord's family should know that I intend to lie-in here, for I would not inconvenience my Lady's house, and yet my Lady, it may be, will not permit me to go out.

L. C. J. But, mistress, there came one to your house from Mrs. Hilton's. Who was that?

Mrs. Patten. I do not know, I was not at home then.

L. C. J. Did you not come home before they went away?

Mrs. Patten. No, Sir.

Serj. Jefferies. Was that woman they brought to lie-in, in your house, mistress?

Mrs. Patten. Who do you mean Sir?

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Serj. Jefferies. The other gentlewoman that came with Mrs. Charnock and Mrs. Hilton. The Lady that spoke just now.

Mrs. Patten. I do not know, I never saw her face in my life, that I know of, what my husband saw I cannot tell, I saw her not, it may be she, it may be not, for any thing I know.

L. C. J. Well, gentlemen, have you done, will you call any more witnesses?

Williams. We have done, unless they call any more.

Serj. Jefferies. We shall only call a noble Lord, my Lord of Aylebury, to testify what he knows, being very much conversant in the family, of the treatment he has observed of this Lady.

L. C. J. That needs not, for there is nobody that fixeth any thing of the matter upon my Lord or my Lady.

Wallop. We do hope in your Lordship's observations upon the evidence to the jury, you will please to take notice, that there is no colour of evidence of any actual force upon the Lady which is laid in the information, that my Lord did *ut & armis abducere*, &c.

L. C. J. Oh, Mr. Wallop, fear not, I shall observe right to the jury; but you have read the book that is written concerning juries lately, I perceive.

Serj. Jefferies. He has studied such books no doubt, and has learned very good counsel from Whitaker.

L. C. J. Look you, Gentlemen of the Jury, here is an information on the behalf of the King, against my Lord Grey, and the other defendants; and it doth set forth, that my Lord Grey having married one of the daughters of the Earl of Berkeley, and having opportunity thereby of coming to the Earl of Berkeley's house, he did unlawfully solicit the Lady Henrietta; another daughter of the Earl of Berkeley's, a young Lady, to unlawful love; and that he did entice her from her father's house; and

that he did cause her to be conveyed away from thence against her father's consent; and that he did unlawfully use her company afterwards in a very ill-manner, an unjustifiable manner; and this, gentlemen, is the substance of the information; in truth it is laid, that he did live in fornication with her. Now, gentlemen, to this my Lord Grey and the other persons, the Charnocks and the Jones's have all pleaded not guilty to it. Now then, the question before you is, whether there was any such unlawful solicitation of this Lady's love; and whether there was any inveiglement of her to withdraw herself and run away from her father's house without his consent; and whether my Lord Grey did at any time frequent her company afterwards. Gentlemen, the evidence that has been given, you have heard what it is, and it is very plain, (if you do believe these witnesses that speak it from my Lord's own mouth) that he hath a long time unlawfully solicited her to lust. For there is nothing else in it, gentlemen, (that is the plain English of it all) he has inticed her to unlawful lust. My Lady she gives evidence of it from his own mouth, that there was an intrigue of unlawful love between them: She says my Lord Grey condemned himself for it several times, but yet prosecuted it; he owned it was a most disingenuous and dishonourable thing in him, which indeed it was; he did therein in truth make a right estimate of the thing. He did own he had betrayed the family, and brought it into great scandal, and had abused both father and mother by this unlawful solicitation of their daughter to this unworthy wicked affection; but he excused it all with the greatness of his passion, and that was all; he prayed her to consider, "It was a great and passionate love, a love that he could not resist; he loved her above all women living," and many fair promises of amendment and desisting he made, but you see how he has performed them. You

hear my Lady Arabella tells you there was a letter written by my Lady Harriett, this Lady that appears now in court as a witness for my Lord Grey, which she had out of her own hand, and she tells you the effect of it; it was to invite my Lord another night, as he had been with her a former night, and to shew the greatness of her longing for him, she desires it might be quickly, not to stay till Monday, for if he did she should be mighty impatient, if he delayed so long; and what she told him, her sister Bell, which I take to be my Lady Arabella, "Had not discovered it, nor heard the noise that was between them that night they were together." My Lady Lucy, she tells you he owned there was an unlawful love between him and her sister, it must needs then be true if he owned it to her, and he said that it put him upon mighty inconveniences, and he owned he had done so much wrong to the family, that he could never repair it. You hear my Lady tells, you she forbid him the family; and you hear likewise, what little designs he had, and what he pretended that he might continue to come to the family, if you believe my Lady. For he pretended that this would be the way to make it public, if he were forbid the house altogether; but he would be under her direction, he would do nothing but what she should approve of; that he would not apply himself to her daughter to speak to her, nor write to her. And you hear that for all this, he did before my Lady Arabella vent a great deal of passion for her, "That she was the only person in the world he had any love for;" that my Lady Arabella tells you she heard him say, when he had seen her fall down like a dead woman. When he had made my Lady a promise that he would not come down without leave, he sends his own wife thither first to beg that he might come down without leave, he sends his own wife thither first to beg that he might come down, and very earnest and importunate she

she was with her mother, not knowing any thing of the intrigue, but was made instrumental to get leave to come down. And at length, leave was given him to dine there, as he went to Suffex, but he comes at nine o'clock at night, and then excuses were made by him for it; and my Lord Berkeley desiring him to stay, who was not acquainted with the unlawful affection that was between his daughter and him, and accordingly he did stay till Saturday. You hear, gentlemen, what is said to you now, as to her carrying away, for all that has been hitherto observed to you, has been only to the unlawful solicitation of this Lady to unlawful love. My Lady tells you, that that very night that my Lord Grey went from her house was her daughter carried away. You see then, the question will be, whether my Lord had any hand in carrying her away, and for that you must weigh these circumstances. It is pretty manifest that this coachman, that is Charnock, did carry her away. Now the Chaplain tells you, that my Lord was earnest in several discourses that day with Charnock, and under some great trouble, he could discern that in his countenance, and several times he was sent for to him, as though there was some mighty earnest business imposed upon Charnock to do. Charnock made as though he went away, it seems, with his Lord, who went away about four o'clock, and the Lady was carried away in the morning between twelve and one which is the time spoken of. Now to prove that Charnock carried her away, you have these circumstances: She was brought to the house of Hilton, there was a Lady brought in there that morning about nine o'clock by Charnock; Charnock was the afternoon before going to Up-Park with his Lord, but it is manifest that he was back that morning at London, and so brought the Lady thither that morning. If you believe Hilton the witness, it is manifest she had been a

journey, and was very weary, so that she was fain to go to bed at nine o'clock. This Lady that was there brought by Charnock and his wife, was afterwards carried to Patten's house, Mrs. Hilton swears it; and Mr. Patten swears they did come in there. There was a great deal of policy used in the case, and care taken; and Mrs. Hilton tells you why, "They saw some men about the door, which they were afraid might be men that came to look after the Lady, and so they slid away through the back-door," which proves something in that she was to be concealed. Then consider the circumstances of the cloaths that do so exactly agree. There was a gown with red and green flowers striped, and there was a petticoat striped with red, and a white quilted petticoat under that the Lady had on that came to Patten's; and the Lady's woman who lay with her and looked after her, describes to you her gown and petticoat to be the same as those were that the Lady had on, who was hurried away from Patten's house at night to another lodging. We cannot indeed discover where that was. Now then, after this, my Lord Grey, he undertakes to my Lady Berkeley, that he would go to Up-Park, and stay there till he had leave to come to town. Patten, who saw the Lady, swears this is the very Lady that sits here, and who has been examined, but denies it. If she was the Lady that was brought to Patten's, she was the same that was brought to Hilton's, whither Charnock brought her, and so there is a full evidence of the guilt of Charnock and his wife, who was the solicitor about the business, took lodgings for her, help'd her away from Hilton's, and helped her to Patten's, and from Patten's somewhere else. So that if you believe them, Charnock and his wife are both guilty. As to my Lord Grey, who went to Up-Park on the Wednesday, soon after he came to town again, and

and it is positively sworn that he came to Jones's upon the Tuesday, and sent for Jones out to come to him, who was in a hack-coach, where he discoursed with him a pretty while, and afterwards the room is provided for the Lady up two pair of stairs in Jones's house. She is brought thither, my Lord Grey came twice to the house, and both times without his perriwig, as the maid swears she knew him very well, and there he took lodgings for a Lady, and that Lady came afterwards. Now if this falls out to be my Lord Berkeley's daughter, then you have it pushed home upon my Lord Grey. That this was my Lord Berkeley's daughter, you have this evidence made up of circumstances. First, The policy used in the case by my Lord, to have all so privately managed. Another circumstance there is, though at first it seems but slight, yet if it be well considered will signify very much, and that is what the maid does testify. She says her linen was brought down to be washed, and there was a shift that was very remarkable, for it had the body of one sort of cloth, and the sleeves of another, and that she took special notice of it, and thence would have concluded that the Lady was not a person of quality; and another of those very shifts that belonged to my Lady Harriett was brought to her afterwards, and she swears it was of the same fashion and make with that which the Lady had that lodged in their house; and it was, as all do agree, just in the same manner as this was, with the body of one cloth and the sleeves of another. Then, there is Colonel Fitz-Gerrard was in those very lodgings at that time; and he comes and tells you, that having heard of my Lord Berkeley's daughter's departure from her father, and considering the circumstances that he had heard the maid say that it was my Lord Grey's mistress that was brought in thither, and such other circumstances concurring,

he did conclude this to be the Lady, and he tells Jones his suspicions concerning it (whose wife was by the way so very officious to conceal the Lady, that she would not suffer her maids to come up stairs, but would rather shut up the shop-windows herself, than the maids should come to see her.) Mr. Jones having discourse with the Colonel about this, and finding the Lady was smocked, was angry at the Colonel's curiosity, which increased the Colonel's suspicion. He told Jones, "This must needs be the Lady, and I will see her." Which he very much fearing, intreated him not to disturb his house at that time of night, and upon promise to let him see her the next morning, he desisted; but told him, "He knew not what he was doing, he did a very ill thing to conceal a young Lady from her friends, her father and mother not knowing where she was, might give her over for dead." But in the morning the Lady was conveyed away. This, to me, is a shrewd circumstance that Jones knew her to be the Lady, and to conceal all the matter, got so much time to send her away. To what purpose else was she carried away, when the Colonel was to see her, that he might be satisfied about his suspicion, and so acquaint her father? But she was conveyed away presently. Gentlemen, it is manifest by all the witnesses, and by what the defendants counsel themselves opened, that under this absence of the Lady from her father, he had an intercourse of letters with her, which is a great circumstance to prove that she was carried away by his contrivance. He could tell the Lady Lucy, "That she should never be brought back again, without he might have leave to visit her." So that it seems he had full power over her. There is another gentleman, who has told you he was set as a spy over him; and if you believe him, my Lord Grey has made a confession to him as he would to his ghostly father, he has told

told you the intrigue of all his unlawful love, from the beginning to the end; how long he was engaged in it before he had any comfort from the Lady, when he had the first demonstration of kindness from her, and the whole matter all along. There is another gentleman, that was sent to treat with my Lord (Mr. Smith) concerning this; he tells you, my Lord Grey and he being in a long discourse, he offered that he would deliver her to one person, but not to another: She should be first sent to his brother-in-law, Mr. Nevil's in Berkshire, afterwards to another place, Mr. Petit's, so as he might have access to her; but he tells you also, this was the conclusion of all, "He would never part with her, nor never deliver her, upon any other terms than that he might have access to her whenever he would." Now lay all this together, and see what it amounts to. He that had so great a passion for her, he that could not be without the sight of her, but used such ways to come to speak to her, he that had letters from her all along, he that had such power over her, that he could deliver her, as he said, or not, and would keep her in spite of her father, unless he might have leave to visit her as often as he pleased; and consider then, I say, whether it is not more than probable, that he had a hand in carrying her away. It is plain beyond all contradiction, she was carried away by his man, who was in his company that night, he pretended to go to Up-Park, but was in London the next morning by nine o'clock. My Lord came afterwards to take lodgings for her, two days one after another. Whether then he be not as guilty as Charnock or any of the rest, nay indeed, the main mover of this ill thing, you are to consider upon the evidence that has been given. But you must, withal, take into your consideration, what my Lord Grey says for himself. He has asked several questions of the Ladies that were examined,

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but truly never a one worth the remembering, that I know of, or that made to his purpose. He does indeed pretend that the young Lady was hardly used at home, and that she fled to him as to a sanctuary for protection; and you hear the several witnesses examined to that point; and they all say she was used, notwithstanding the discovery of this ill business, with the greatest kindness and respect that a child could be used with by her mother, and no hardship put upon her, but only she was forbid to write any letters to my Lord Grey, and had a maid put upon her, to keep her from running away, because once before she attempted it, as her mother did believe. The Lady herself is here, she has been examined; she indeed denies this all along; she says that this coachman Charnock did not carry her away; she says she was not at Hilton's, nor at Patten's, nor at Jones's; that she never saw my Lord Grey till a long time after she went from her father's. But this is all disproved by the other witnesses, and so whether you will believe her single testimony, or theirs, I must leave it to you. You must consider under what circumstances she is, and truly she doth not seem to be any way fit to be believed in this matter. Jones and his wife are as guilty as any of the rest, for their contrivance to keep her secret, especially after that he had promised Fitz-Gerard to let him see her. Look you, as to the long discourse my Lord Grey made, I must tell you, it is not to be believed further than it is proved. Now my Lord Grey did tell us, that he from time to time had given caution to my Lady, that she should look to her daughter, and lock her up, for else she would, as he believed, run away. My Lady denies it all, and so it goes all for nothing, and you are to take no notice of it. I must leave it to you, whether you do believe what these witnesses have sworn, if you do believe the evidence produced for the King, most certainly they

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are all five guilty of the charge in the information.

Just. *Dolbin*. There is no evidence against Rebecca Jones.

L. C. J. No, there is not.

Serj. *Jefferies*. No, we cannot insist upon it that there is, you must find her not guilty.

Just. *Jones*. I must remember you of one thing, gentlemen, and that is, what dropped from my Lord Grey's own mouth, that when my Lord, as he says, gave his advice that she should be looked after carefully, he would not give his reason for it, but after he did, as he says, tell it my Lady Lucy, that she complained to him at St. Jones's, "That she led the life of a dog or a slave, and she would not endure it any longer, and desired him to assist her or she would do herself a mischief." Why was not this told before?

L. C. J. Ay, but brother, my Lady Berkeley denies it all too.

[Then the jury began to withdraw.

Earl of *Berkeley*. My Lord Chief Justice, I desire I may have my daughter delivered to me again.

L. C. J. My Lord Berkeley must have his daughter again.

Lady *Henrietta*. I will not go to my father again.

Just. *Dolben*. My Lord, she being now in court, and there being a *homine replegiando* against my Lord Grey, for her, upon which he was committed, we must now examine her. Are you under any custody or restraint, Madam?

Lady *Henrietta*. No, my Lord, I am not.

L. C. J. Then we cannot deny my Lord Berkeley the custody of his own daughter.

Lady *Henrietta*. My Lord, I am married.

L. C. J. To whom?

Lady *Henrietta*. To Mr. Turner.

L. C. J. What Turner? Where is he?

Lady *Henrietta*. He is here in court.

[He being among the crowd, way was made for him to come in, and he stood by the Lady and the Judges.

L. C. J. Let's see him that has married you. Are you married to this Lady?

Mr. *Turner*. Yes, I am so, my Lord.

L. C. J. What are you?

Turner. I am a gentleman.

L. C. J. Where do you live?

Turner. Sometimes in town, sometimes in the country.

L. C. J. Where do you live when you are in the country?

Turner. Sometimes in Somersetshire.

Just. *Dolben*. He is, I believe, the son of Sir William Turner that was the advocate, he is a little like him.

Serj. *Jefferies*. Ay, we all know Mr. Turner well enough. And to satisfy you this is all a part of the same design, and one of the foulest practices that ever was used, we shall prove he was married to another person before; that is now alive, and has children by him.

Turner. Ay, do Sir George if you can, for there never was any such thing.

Serj. *Jefferies*. Pray, Sir, did not you live at Bromley with a woman as man and wife, and had diverse children, and living so intimately were you not questioned for it, and you and she owned yourselves to be man and wife?

Turner. My Lord, there is no such thing, but this is my wife I do acknowledge.

Att. Gen. We pray, my Lord, that he may have his oath.

Turner. My Lord, here are the witnesses ready to prove it that were by.

Earl of *Berkeley*. Truly, as to that, to examine this matter by witnesses, I conceive this court, though it be a great court, yet has not the cognizance of marriages: And though here be a pretence of a marriage, yet I know you will not determine

mine it, how ready soever he be to make it out by witnesses, but I desire she may be delivered up to me her father, and let him take his remedy.

L. C. J. I see no reason but my Lord may take his daughter.

Earl of Berkeley. I desire the court will deliver her to me.

Just Dolben. My Lord, we cannot dispose of any other man's wife, and they say they are married. We have nothing to do in it.

L. C. J. My Lord Berkeley, your daughter is free for you to take her; as for Mr. Turner, if he thinks he has any right to the Lady let him take his course. Are you at liberty and under no restraint?

Lady Hen. I will go with my husband.

Earl of Berkeley. Hussy, you shall go with me home.

Lady Hen. I will go with my husband.

Earl of Berkeley. Hussy, You shall go with me, I say.

Lady Hen. I will go with my husband.

Wil. Now the Lady is here, I suppose my Lord Grey must be discharged of his imprisonment.

Serj. Jefferies. No, my Lord, we pray he may be continued in custody.

L. C. J. How can we do that, brother, the commitment upon the *writ de homine replegiando* is but till the body be produced, and here she is, and says, she is under no restraint.

Serj. Jefferies. My Lord, if you please to take a little time to consider of it, we hope we may satisfy you that he ought still to be in custody.

L. C. J. That you can never do, brother.

Serj. Jefferies. But your Lordship sees upon the proofs to-day, this is a cause of an extraordinary foul nature, and what verdict the jury may give upon it we do not know.

Att. Gen. The truth of it is, we would have my Lord Grey forth-coming, in case he should be convicted, to receive the judgment of the court.

L. C. J. You cannot have judgment this term, Mr. Attorney, that is to be sure, for there are not four days left. And my Lord Grey is to be found to be sure, there never yet before this was any thing that reflected upon him, though this indeed, is too much and too black if he be guilty.

Just. Dolbin. Brother, you do ill to press us to what cannot be done; we, it may be, went further than ordinary in what we did, in committing him being a Peer, but we did it to get the young Lady at liberty; here she now appears, and says she is under no restraint; what shall we do? She is properly the plaintiff in the *homine replegiando* and must declare, if she please, but we cannot detain him in custody.

L. C. J. My Lord shall give security to answer her suit upon the *homine replegiando*.

Wil. We will do it immediately.

L. C. J. We did, when it was moved the other day by my brother Maynard, who told us of ancient precedents, promise to look into them, and when we did so, we found them to be as much to the purpose, as if he had cast his cap into the air, they signified nothing at all to his point. But we did then (as we did at first tell my Lord, so) if he did produce the Lady we would immediately bail him. And she being now produced, we are bound by law to bail him. Take his bail.

[And accordingly he was bailed at the suit of the Lady Henrietta Berkeley, by Mr. Forrester, and Mr. Thomas Wharton.]

Earl of Berkeley. My Lord, I desire I may have my daughter again.

L. C. J. My Lord, we do not hinder you, may take her.

Lady Henrietta. I will go with my husband.

Earl

Earl of *Berkeley*. Then all that are my friends seize her I charge you.

L. C. J. Nay, let us have no breaking of the peace in the court. But, my Lord *Cavendish*, the court does perceive, you have apprehended yourself to be affronted by that gentleman Mr. Craven's naming you in his evidence; and taking notice of it, they think fit to let you know, that they expect you should not think of righting yourself, as they have some thoughts you may intend. And therefore you must lay aside any such thoughts of any such satisfaction. You would do yourself more wrong by attempting to right yourself in any such way.

Lord *Cavendish*. My Lord, I am satisfied that your Lordship does think it was impertinently spoken by him, and shall not concern myself any further, but only desire that the court would give him some reproof for it.

Then the court broke up, and passing through the hall there was a great scuffle about the Lady, and swords drawn on both sides, but my Lord Chief Justice coming by, ordered the Tip-staff that attended him (who had formerly a warrant to search for her, and take her into custody) to take charge of her, and carry her over to the King's Bench, and Mr. Turner asking if he should be committed too, the Chief Justice told

him, he might go with her if he would which he did, and, as it is reported, they lay together that night in the marshal's house, and she was released out of prison, by order of the court, the last day of the term.

On the morning after the trial, being Friday the 24th of November, the jury that tried the cause, having (as is usual in all causes not capital tried at the bar, where the court do not sit long enough to take the verdict) given in a private verdict the evening before, at a Judge's chamber, and being now called over, all appeared, and being asked if they did abide by the verdict that they gave the night before, they answered, Yes; which was read by the Clerk of the Crown to be, "That all the defendants were guilty of the matters charged in the information, except Rebecca Jones, who was not guilty;" which verdict being recorded, was commended by the court and the King's Counsel, and the jury discharged.

But in the next vacation, the matter, as the report went, was compromised, and so no judgment was ever prayed, or entered upon record, but Mr. Attorney General was pleased before the next Hillary term, to enter a *Nolle prosequi* as to all the defendants.

The Trial of the LORD RUSSEL. July 13. 1683. My Lord Russel was set to the Bar, within the Bar.

Clerk of the Crown.

WILLIAM Russel, hold up thy hand, (which he did). Then this indictment was read, which is as followeth:

"London. The jurors of our Sovereign Lord the King, upon their oaths present, That William Russel late of London, Esq., together with other false traitors, as a false traitor

traitor against the most illustrious and excellent Prince, our Sovereign Lord Charles II. by the Grace of God, of England, Scotland, France and Ireland King, his natural Lord, not having the fear of God in his heart; nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, and the true duty, and natural obedience, which true and faithful subjects of our Sovereign Lord the King, towards him our said Lord the King do bear, and of right ought to bear, wholly withdrawing; and with his whole strength intending the peace and common tranquillity of this kingdom of England to disturb, and war and rebellion against our said Lord the King to move and stir up; and the government of our said Lord the King within this kingdom of England to subvert, and our said Lord the King from his title, honour and Kingly name of the imperial crown of this his kingdom of England to put down and deprive; and our said Lord the King to death and final destruction to bring and put, the second day of November, in the year of the reign of our Sovereign Lord Charles II. King of England, &c. the four and thirtieth, and divers others days and times, as well before as after, at the parish of St. Michael Bassishaw, in the ward of Bassishaw, London, afore said, maliciously and traiterously with divers other traitors, to the jurors afore said, unknown, he did conspire, compass, imagine and intend our said Lord the King, his supreme Lord, not only of his Kingly state, title, power and government of this his kingdom of England to deprive and throw down; but also our said Lord the King to kill, and to death to bring and put; and the ancient government of this his kingdom of England to change, alter and wholly to subvert, and a miserable slaughter amongst the subjects of our said Lord the King through his whole kingdom of England to cause and procure, and insurrection and re-

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bellion against our said Lord the King to move, procure, and stir up within this kingdom of England; and to fulfil and perfect the said most horrible treasons, and traiterous compassings, imagination and purposes afore said, he the said William Russel, together with other false traitors, as a false traitor, then and there, and divers other days and times, as well before as after, maliciously, traiterously and advisedly, between themselves, and with divers other traitors, to the jurors afore said unknown, they did meet together, consult, agree, and conclude, and every of them, then and there, did consult, agree and conclude, insurrection and rebellion against our Sovereign Lord the King, within this kingdom of England, to move and stir up; and the guards for the preservation of the person of our said Lord the King, to seize and destroy, against the duty of his allegiance, against the peace, &c. and also against the form of the statutes, &c.

Cl. of Cr. How say'st thou, Art thou, Guilty, or not Guilty?"

Lord Russel. My Lord, may I not have a copy of the matter of fact laid against me, that I may know what to answer to it?

L. C. J. [*Sir Edmund Saunders.*] My Lord, we can grant you nothing till you have pleaded. Therefore that which is put to you now is, Whether you say you are guilty, or not guilty?

Lord Russel. My Lord, I am not guilty.

Cl. of Cr. Culprit. How wilt thou be tried?

Lord Russel. By God, and by my country.

Cl. of Cr. God send thee a good deliverance.

L. Russel. My Lord, I thought a prisoner had never been arraigned and tried at the same time, I have been a close prisoner.

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L. C. J.

L. C. J. For crimes of this nature, my Lord, we do it continually.

L. Ruffel. It is hard, my Lord.

Att. Gen. My Lord hath no reason to complain for want of notice, for since Monday se'ennight he had notice of his trial, and the matters alledged against him he had notice of, for questions were put to him about this matter, he hath been very fairly dealt with, he hath had the liberty of counsel to advise him; there hath been no sort of liberty denied him, which becomes any subject to have in this condition.

L. C. J. My Lord, I do not know whether you hear Mr. Attorney. He says, your Lordship hath had a great deal of favour shewn you already, in that you have been acquainted with the crimes for which you are now indicted, that you have had a great deal of warning given you, that you have had the liberty of counsel, which hath not been known granted to any under your Lordship's circumstances. He says, he doubts not but your Lordship is prepared for your defence, because you have had so much knowledge, and warning of the time and matter for which you were to be called in question.

L. Ruffel. My Lord, I am much to seek, I only heard some general questions, and I have witnesses, that I believe are not yet in town, nor will be, I believe, till night; I think it very hard I can't have one day more.

Att. Gen. Monday se'ennight your Lordship had notice.

L. Ruffel. I did not know the matter I was charged with.

Att. Gen. Yes certainly, for I was with you myself, my Lord; and those questions you were examined upon, were a favour to you, that you might know what the matter was you were accused of.

L. C. J. My Lord, without the King's counsel we cannot put off the trial; if the King's counsel think not fit to put it off,

we cannot grant your Lordship's request in this case.

L. Ruffel. I would desire a copy of the pannel of the jury, that I might consider of it; for how else can I make any just challenge? I thought the law had been very favourable to men upon their lives; and therefore it had allowed people to have some little notice.

L. C. J. Hath not your Lordship had a copy of the pannel? I think your Lordship was allowed one. We gave order your Lordship should have a copy of the pannel.

Att. Gen. We did indulge him so far, that he might have a note of all the men returned.

L. Ruffel. I never had a copy of the pannel.

L. C. J. It was the fault of your Lordship's servants then; for I gave order for it myself. It is such a favour, that in regard a man's life lies at stake, we never did deny it to my knowledge. And therefore in this case I gave order to the Secondary to deliver a copy. I know the King did not design to be hard upon my Lord in his trial, but that he should have as fair a trial as ever any noble person had.

L. Ruffel. I pray I may have a copy then.

Serj. Jefferies. If my Lord had sent his agents, and it had been refused, there had been something in it.

Att. Gen. Secondary Normanfel was with me, and I gave him my allowance, though it was not his right.

L. C. J. That my Lord may not be surprised, what think you of giving my Lord time till the afternoon, and try some of the rest in the mean time?

Att. Gen. Truly, my Lord, if I could imagine it were possible for my Lord to have any witnesses, I should not be against it.

L. Ruffel. It is very hard.

Att. Gen.

Att. Gen. Do not say so, the King does not deal hardly with you, but I am afraid it will appear you would have dealt more hardly with the King: You would not have given the King an hour's notice for saving his life.

Secondary Trotman. I gave my brother Normansel a copy of the pannel on my side, and hear that my brother Normansel hath said that he delivered a copy. Then Secretary Normansel was sent for, and the court staid for him some time.

Atwood. My Lord, a gentleman told me, he did not know whether it was fit till he had consulted the Attorney General; afterwards I had a copy as it stood then, not as it is now.

Att. Gen. I desire my Lord may be asked who he sent for it?

L. Russel. I did not send for it; I enquired, and they said it would be refused.

Atwood. No, the gentleman had it with the fair perriwig.

L. C. J. It was delivered to your servant, or agent, what did you do with it?

L. Russel's Gent. Sir, the gentleman gave me out of a book some names.

Serj. Jefferies. What did you do with them?

L. Russel's Gent. I writ them down, they were not perfect, I did not know what they were.

L. C. J. Sir, you were to blame, not to deliver it to my Lord.

L. Russel's Gent. I was not bound to deliver an imperfect thing to my Lord.

L. C. J. Sir, you should have consulted your Lord's advantage, so as to have delivered any thing for his good.

L. Russel's Gent. My Lord was in the tower, I was not admitted to him.

Att. Gen. Did you give it to my Lady?

L. Russel's Gent. Yes, those names I had, my Lady had.

Serj. Jefferies. How long ago was it?

Atwood. Tuesday or Wednesday last.

L. C. J. (to Lord Russel's servant.) Look you, Sir, when had you this?

L. Russel. I had no pannel, I will assure you, delivered me; I had some names of people that they said were usually on juries.

L. C. J. They were the names of the jury.

L. Russel. They were only the names of them that were like to be of the jury, no other pannel came to me.

L. C. J. My Lord, there can be no other copy given, but the same that was delivered; for your Lordship does know in this case, any person accused, as your Lordship is, may challenge thirty-five, and therefore there is a return generally of three or four score, and these are returned in case of your Lordship's challenge. When you have challenged so many as you please, then the twelve men that stand after your challenge are to be of the jury: And therefore this is not like a pannel made up by the Sheriff, in ordinary cases, between man and man; there they make a formal pannel, from which they cannot depart, when that is once returned; but here in criminal cases, because of the challenge, they return either sixty or eighty: And I presume your Lordship was attended with the names delivered.

Serj. Jefferies. How many names were delivered?

Atwood. Above an hundred.

L. Russel. I had nothing of a pannel delivered to me, but some names.

L. C. J. There was never any formal pannel delivered to any person accused; the copy of it is in paper always.

L. Russel. How can I know who to challenge?

L. C. J. My Lord, the copy of it is in your hands; your Lordship hath been deceived in this, by not understanding the true nature of these things: If we were to give you a new one, we could give you but such an one.

L. Russel.

L. Ruffel. I had no paper but from the true officer.

L. J. C. No, but from your servant.

Att. Gen. My Lord, you will have cause to complain, if they are not the same men we now shall call.

L. C. J. My Lord, that paper will guide your Lordship in your challenges.

L. Ruffel. My Lord, I did not mind it, I put it away. My Lord, with your favour, I must needs insist upon having a pannel, and that you will put it off till the afternoon; I have a witness that is not in town. My counsel told me it was never done, or very seldom, arraigning and trying at the same time, except in case of common malefactors.

L. C. J. Mr. Attorney, Why may not this trial be respited till the afternoon?

Att. Gen. Pray call the jury.

L. C. J. My Lord, the King's counsel think it not reasonable to put off the trial longer, and we can't put it off without their consent in this case.

L. Ruffel. My Lord, it is hard, I thought the law had allowed a pretty deal of favour to a man when he came upon his life. How can I know to except against men, that I never heard or saw one of them?

Cl. of Cr. You the prisoner at the bar; those good men that have been now called, and here appear, are to pass between you and our Sovereign Lord the King, upon your life or death, if you challenge any of them, you must speak as they come to the book to be sworn, before they are sworn.

L. Ruffel. My Lord, may not I have the use of pen, ink, and paper?

Court. Yes, my Lord.

L. Ruffel. My Lord, may I not make use of any papers I have?

L. C. J. Yes, by all means.

L. Ruffel. May I have some body write to help my memory?

Att. Gen. Yes, a servant.

L. C. J. Any of your servants shall assist you in writing any thing you please for you.

L. Ruffel. My wife is here, my Lord, to do it.

L. C. J. If my Lady please to give herself the trouble.

Att. Gen. My Lord, you may have two persons to write for you if you please.

L. Ruffel. My Lord, here hath been a name read, that I never saw in the list of the jury I had, I heard Sir Andrew Foster called.

L. C. J. He is not called to be of the jury.

Cl. of Cr. Call John Martin.

[He appears.]

L. Ruffel. Are you a freeholder of 40s. a-year? I hope none are allowed in the pannel, but those that have freeholds.

L. C. J. There is no pannel made in London by freeholders, we have very few freeholders capable of being impannelled, because the estates of the city belong much to the nobility and gentlemen that live abroad, and to corporations; therefore in the city of London the challenge of freeholders is excepted.

L. Ruffel. My Lord, I thought it had been always so, and the law hath been clear in that case throughout England, that no man ought to be tried for his life, but by those that have freeholds. My Lord, I remember I read the statute of 2 H. 5. where 'tis positive that no persons shall be judged in case of life and death but by those that have 40s. a year.

L. C. J. My Lord, that statute extends not to this case. Read the statute.

Cl. of Cr. "Whereas perjury is much used in the city of London, upon persons, &c."

L. C. J. Is this the statute your Lordship has read?

L. Ruffel. This is not in the case of life and death.

L. C. J.

L. C. J. It is not, my Lord.

L. Russel. That that I read is positive. And if your Lordship will not allow of it, I desire my counsel may come and argue it, for 'tis a matter of law, and I cannot argue it, whether the jury are not to be freeholders.

Serj. Jeffries. There is nothing mentioned in that statute with relation to the city of London indeed, but the necessity of the thing requires it.

Att. Gen. It will not be material, 'tis a collateral point, for most of the jury have freeholds.

L. C. J. Do you allow the exception?

Att. Gen. No, my Lord.

L. C. J. Therefore we must, if my Lord stand upon it, hear his counsel. My Lord, we will hear your counsel; what counsel do you desire, my Lord?

L. Russel. The counsel that were allotted me.

L. C. J. No, you must have counsel assigned by us. The counsel that was assigned elsewhere signifies nothing.

L. Russel. Mr. Pollexfen, Mr. Holt, and Mr. Ward.

The said persons were called, and came into court.

L. C. J. (To the counsel.) Gentlemen, my Lord here desires counsel, you are here assigned as counsel for my Lord Russel that is at the bar, 'tis concerning a thing wherein he doubts the law, he would except to the jury upon this account, to the poll, because they have not freehold within the city of London, and he desires you may be assigned his counsel to make it out that this is a cause of challenge.

Att. Gen. 'Tis a case of treason, Mr. Pollexfen.

Ward. We take it so.

Pollexfen. My Lord, perhaps if we had more consideration of it we should speak more, but if your Lordship pleases to hear us what we can say, first we take it with

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submission, at common-law, a freehold was necessary to make a man a juryman. But that which falls out in this case, is the statute of 2 H. 5. c. 3. which statute I suppose is here in court. That statute says this (if you please I will quote the substance of it) "That none shall be admitted to pass upon any inquest upon the trial of the death of a man, except he have lands and tenements of the yearly value of 40s." Now we are here I think within the words of the statute, and I take it to be no question at all, were we not in a city and county. I think this would be no question upon any trial in any county at large. The statute does not make any exception or distinction between cities and counties at large, but the words are general, as I have opened them. My Lord, the statute does also provide in cases of freehold or forty marks. Now, my Lord, to prove this statute extends to London, though a city and county, there are other statutes that have been made subsequent, make it plain that it does so extend. But before I speak to them, there is 1 Inst. fo. 157. that takes no notice of this statute, and speaks it generally, that the freehold ought to be in the same county, nor do I remember to have seen any book that distinguishes between counties at large and cities and counties. But statutes that have been made concerning cities and counties are a plain declaration that this is meant of juries both in cities and counties. I will mention the statute 7 H. 7. c. 5. The substance of the statute is this. It takes notice that there were challenges in London for that they had not 40s. per annum, and that this challenge was to be made in the wards, which are the same with hundreds in the counties, so this statute is made to take away the challenge of 40s. freehold. This statute of 7 H. 7. that takes away the challenge in London for not having 40s. is, with submission, a strong evidence and authority that

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that it was before that time a good challenge, for otherwise to what end should they make a statute to take away the challenge, unless it were before a good cause of challenge? In the next place, 4 H. 8. c. 3. that extends to civil causes in London, and says, that the London jurors shall (but provides only for London in civil causes) be admitted in civil causes, that have goods to the value of one hundred marks. My Lord, if that first statute or the common law had not extended to require freeholds in London, then there would have been no need of this statute that was made to enable men to be jurors that had goods to the value of one hundred marks. So that we take it to be good authority, that by the common law freehold was required in all civil causes. Then there is another statute 23 H. 8. c. 13. and that will be a strong evidence to shew what the law is: For the statute says, in cities and boroughs, in trials of murder and felony, if a freeman of the city of London is to be tried, the freemen shall be upon the jury, though they have not freehold, and then there is a proviso, that for Knights and Esquires that are out of the borough, though they are arraigned in the borough, that extends not to them, though in cases of murder and felony. As for this statute we take this sense of it, first, That it does not extend to treasons, for when it only names murders and felonies, that makes no alteration as to treason, therefore that stands as before: But if there be any alteration that extends only to freemen and burgesses that are to be tried, but not to Knights and Esquires, so that if we were in a case of felony and murder, I think we are not concerned in this statute, for we are no freeman nor burgess, but we are an Esquire, and therefore ought to be tried by freeholders: So that for the law we rely upon these statutes, that we have looked upon as strong evidence, that there ought to be in the trial of

the life of man, especially for treason, freeholders. First, if it were in civil causes, if this qualification be not in jurymen, then an attainr would lye; the penalty in an attainr is, that their houses should be pulled down, &c. This is provided by the law, to the intent the jury may be careful to go according to their evidence. 'Tis true, no attainr does lie in criminal causes, but if so be in civil causes there be required freeholders, and an attainr lies if there be not, 'tis not reasonable to think but there should be as great regard to the life of a man as to his estate. Next, my Lord, I do not know any law that sets any kind of qualification but this of freehold, so that be the persons of what conditions or nature soever, (supposing they be not outlawed) yet these persons, if this law be not in effect, may then serve, and be put upon the life of a man. These are the reasons, my Lord, for which we apprehend they ought to be freeholders.

Mr. Holt. My Lord, I would desire one word of the same side: We insist in this case upon these two things; First, we conceive by the common law, every jurymen ought to have a freehold, we have good authority for it, Coke's First Institutes, but if that were not so, I think the statute Mr. Pollexfen hath first mentioned, 2 Hen. 5. c. 3. to be express in this point. My Lord, the statute in the preamble does recite all the mischiefs, it says great mischiefs ensued by juries that were made up of persons that had not estates sufficient; In what? As well in the case of the death of a man, as in the case of freehold between party and party: The statute reciting this mischief, does in express words provide two remedies for the same in these cases: First, on the life and death of a man, the jury or inquest to be taken, shall have 40s. per annum, and so between party and party forty marks, so that this being the trial of the death of a man, it is interpreted by

Stamford

Stamford 162 a. That is, In all cases where a man is arraigned for his life, that is within the express words of the statute. Besides this exposition that hath been put upon the statute, my Lord, it does seem that the judgment of several Parliaments hath been accordingly in several times and ages. My Lord, to instance in one statute that hath not been mentioned, and that is the 33 of H. 8. c. 23. That does give the King power to award commissions of Oyer and Terminer, for trials in any county of England: And that (says the statute) in such cases no challenge to the shire or hundred shall be allowed; that is, you shall not challenge the jury in such a case, because they have not freehold, are not of the county where the treason was committed; but that upon the trial challenge, for lack of freehold of 40s. a year, shall be allowed though it alters the manner of trying treason by the common law; so that, my Lord, here is the opinion of that very Parliament; that though it took away the usual method of trials; yet it saves the prisoner's challenge for want of freehold. Now indeed that statute is repealed; but I mention it as to the *proviso*, that it shews the judgment of that Parliament at that time: My Lord, those other statutes that have been made to regulate cities and towns corporate, why were they made? 33 H. 8. That no freehold should be allowed, that shews that 2 H. 5. did extend to these cases. But, my Lord, these statutes that shew the judgment of the Parliament sufficient to our purpose, do not extend to this case; the statute goes only to murders and felonies, but not to treasons: And we are in the case of a penal statute, and concerning the life and death of a man, which ought to be taken strictly, it ousts the prisoner of a benefit; and by parity of reason, if treason be not mentioned, your Lordship can't by equity extend it to it, when it only mentions inferior offences, and takes away the

benefit in lower cases: like the case of the Bishop of Winchester, where the statute set down Dean and Chapters, and other ecclesiastical persons, it shall not extend to Bishops, because it begins with persons of an inferior nature: No more shall murder and felony extend to treason. But further the statute only concerns freemen, for there is an express *proviso* in the case: For in case any Knight or Esquire come to be tried in the place, he has his benefit as before. My Lord, we are in this case, as in the case not mentioned in the statute, we are not a freeman of London. My Lord, there is another thing 7 H. 7. c. 5. Why there was not only requisite at the common law, that the jurors had sufficient freehold, but it was required it should be in the hundred; and freehold in the wards in the city is the same with freehold in the hundreds in the country: So that the want of freehold in the hundred, was a good cause of challenge. So that I think it will hardly be denied, but that a jury that passes upon the life of a man, ought by the law, by the statute, and by the judgment of the Parliament, to have freehold. Where is there then any statute whatsoever that makes a difference in this case between London and other counties? We are in the case of treason, we have taken our exceptions, and on behalf of the prisoner at the bar, we pray the challenge may be allowed.

Mr. *Ward*. My Lord, I shall be short, because Mr. Pollexfen has observed these things so particularly already. I observe the statute of H. 5. is a general statute, and extends throughout the realm: Now when the thing is thus general, there is no room to except particulars. And in this case 'tis within the very words of the law, if the words be so generally penned in the negative, then we conceive there is no construction to be made upon them, unless some subsequent Parliament alter it. Coke's Institutes 157. where 'tis said in treason as well

well as any thing else, upon H. 5. there shall be freeholds. If they have provided in civil and other criminal causes, it were strange that this should be *Casus omisus*, but there is no construction against a negative law. For the Parliament taking care of the city of London (as the subsequent statutes say) that he that hath one hundred marks shall pass in civil causes, and then it says in murders and felonies, and that only confined to the freemen of the place, does sufficiently explain the law, where 'tis not altered by any subsequent act, therefore I desire the challenge may be admitted:

Att. Gen. My Lord, These gentlemen's foundation is not good, for they prove it not by any books, that at common law it was requisite for a juryman to have freehold. My Lord, I deny their foundation, there is no such law, and at this day in all criminal cases, where the statute doth not direct it, as for riots and other informations for misdemeanor, there is no law restrains them, and they may be tried by any men they have no exception against. Then 2^d H. 5. says, None shall be admitted to pass upon the death of a man, (I take it to extend to all capital matters, though it is pretty oddly expressed; for when a man is accused of other felonies and high treasons, 'tis of the death of a man) unless he have lands or tenements, of the yearly value of 40s. But I will take it as these gentlemen do at this time, it not being so at common law, nor in other criminal cases, but what are provided for by the statute: As to other matters of felony and murder, no doubt there these challenges are to be taken upon the statute, but not for treason, because the statute of Queen Mary does expressly repeal that statute; and no statute since takes away the force of that of Queen Mary; that all trials for treason shall be as at the common law; and according to this the constant practice

in all cities (not only London) where persons have been indicted for High-Treason, hath been. There was never any such thing pretended: Most of these gentlemen have freeholds, but we would not have this point lost to the city of London; so that the statute they speak of, and the interpretations of the several other statutes too, are to no purpose, for we say by common law, all causes might be tried by any persons, against whom there was not sufficient cause of challenge; and the common law is by that statute restored in this point.

Sol. Gen. My Lord, I have little to say, Mr. Attorney hath given a true answer to it, the foundation does fail them. It was not necessary at common law, for a juryman to have freehold: But then they must shew you, my Lord, it is altered and made necessary. The statute of H. 5. does not seem to extend to treason, but if it did, 'tis now out of doors, by that of Queen Mary, whereby all trials of treason are reduced to the common law. This is that we answer, they fail in their foundation, they do not make it out, that it was necessary for a juryman at common law to have freehold.

Serj. Jefferies. My Lord, I confess they have cited several acts of Parliament, and upon them lay their foundation, and draw inferences from them: But they will find, that in several acts of Parliament which they have quoted, there is a particular regard had for the preservation of the constant usage and customs for trials within the city of London. That notwithstanding several acts of parliament have in other places ascertained the value of jurors; yet they had still an eye that the city of London should continue in its usages. I think it will be necessary to put you in mind of the case of the city of Worcester. It would be very hard, say they, because an attainder does not lie in criminal matters; if you intend by that to have people of ability, 'tis well.

well known, that the ablest people in the city of London, have scarce any freehold in it; for that most of the inheritances of the city of London remain in the nobility and in corporations. Now in the case of my Lord Russel, he hath a peremptory challenge to thirty-five, and I think I may adventure to say, there can scarce be thirty-five more that can call themselves freeholders in London; consider the consequence then, treason should be committed in the city of London, and there would not be enow in the city of London to try it. In the case of the *Quo Warranto* brought against the city of Worcester, to know by what warrant several took upon them the offices of Aldermen, the gentlemen at the bar objected that it was reasonable that no freehold should be determined, but by freeholders. But the Judges of the King's Bench, (the court being full) for the necessity of the thing, lest there might not be sufficient freeholders in the city, having sent one of the Judges of that court to your Lordships of the Common Pleas, for that reason did agree the challenge was not good. I know these gentlemen will please to remember the case; so that I say, as in one case we ought to be tender of the life of the prisoner, so we ought surely to be tender of the life of the King, otherwise it may so happen that the King's life may be encompassed, and treason committed in the city, and there would be no way in the world to try it: Therefore we pray for the King the challenge may be over-ruled.

Mr. North. My Lord, It is the practice to make the *Venire facias*, without mentioning freehold, for it does not command that they return so many men that have freehold, but *probos & legales homines de vicineto*; therefore at the common law, those were good inquests to try any man that were not excommunicated nor under any out-law. 'Tis true, there are statutes that say, all jurymen shall have freehold;

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but we say these statutes do not extend to the city of London, but that it is governed by its own customs; and we say it is the custom that citizens of ability have been returned, that have no freehold. But granting what we do not, by way of supposal, my Lord, it does not extend to this case, because trials are to be according to the use at common law, by the statute of Queen Mary, which does set them at large again; and that is the reason the prisoner, in this case, hath his challenge for thirty-five, and is in other cases restrained to twenty; so that we say, these men of ability are good, and there is no statute affects them.

L. C. J. Mr. Pollenfen, Do you find any judgment, that in cases of treason by common law, they might except for want of freehold? Have you any resolution in the case?

Mr. Pollenfen. I think there are books that say, at common law there must be freehold.

L. C. J. What, in treason?

Mr. Pollenfen. No, my Lord.

L. C. J. Unless you speak of treason, you do not speak *ad idem*. For I do take it that in cases of treason, or in cases of felony, at the common-law, they had no liberty to except to jurors, that they had not any freehold, but that at the common-law any good and lawful men might pass. Then take as introductive of a new law the statute of Hen. 5. I am of the mind that this statute of Hen. 5. peradventure may extend to treasons and felonies; but when the statute of Queen Mary comes and says, all trials shall be by such evidence, and in such manner, as by common law they ought to have been, I do not see how it is possible to make an objection afterwards of this nature. For, admitting this Act of Parliament of Hen. 5. had altered the common law, and given a challenge, why then when the statute of Queen Mary comes and sets

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all trials at large in the case of treasons, then certainly the challenge is gone again, and I doubt you will not find one exception in this case, ever since that statute concerning the jury's freehold in cases of treason, but it hath generally passed otherwise, and there hath not been any ever excepted; I doubt it will be a very hard thing to maintain such a challenge now. Here are my Lords and brothers will be pleased to deliver their opinions. It is a business of great consequence, not only for this noble person at the bar, but for all other persons.

L. C. Bar. I agree with your Lordship perfectly, but if the counsel had laid a right foundation that it had been so at common law, there had been much said; but I take it at common law there was no challenge for want of freehold, and I am induced to think so, for otherwise what needed the statute of Hen. 5. been made? But whether it extend to treason or no, I am not so clear. And if it did, it is wiped off again by that of Queen Mary, which reduces all to the common law trial.

Just. Windham. I am of the same opinion: I conceive at common law, lack of freehold no good cause of challenge. It is true, that challenge is given in some cases by Act of Parliament, yet I doubt whether it extend to a thing of so high nature as treason, for other statutes have not mentioned any thing of treason. But suppose 2 H. 5. did extend to it, yet it is very plain, the statute of 1 and 2 Queen Mary hath set all at large again, they are to be good and lawful men, and I do not find that any thing of the lawfulness must be the freehold. And therefore, I conceive this is no just exception in this case.

Mr. J. Jones. My Lord, I am of the same opinion: I am of opinion that the common law did not require freehold to be a good cause of challenge in the case of treason, and the rather, because at the

common law, a man that was indicted of High-Treason had liberty to challenge, peremptorily, to the number of thirty-five persons. My Lord, if the common law be altered by the statute of H. 5. yet I take it, that the statute of 1 and 2 Ph. and M. does restore the common law in this particular point. For whereas there was a statute of H. 8. to restrain the prisoner to the number of twenty for his challenge, now the statute restoring it to common law, the prisoner hath his challenge to thirty-five, as he had before that statute of H. 8. So I take it, the King shall have his privilege also to try a prisoner for treason, by persons that have not freehold.

Mr. J. Charlton. I am of the same opinion. And truly the rather, because no president hath been offered of any such challenge before, and many men have suffered, and sure if it could have been, many would have made use of it.

Mr. J. Levins. I am of opinion 'tis not to be allowed. I do not think myself driven to the necessity to determine now, whether freehold was a good challenge at common law in point of treason. I think the statute of Ph. and M. hath restored the trials to the common law. What was the common law? The common law is the custom of England, which is other in cities than in counties, and the custom of London is part of that common law. So, though it be a cause of challenge in a county at large, yet it is not a cause of challenge in cities, where freeholders are not to be found. Now that which satisfies me is, That this custom is restored by the statute of Ph. and Mary; because never such a challenge hath been. And it is known when twenty were tried for treason together in this very place, and one of them a notable cunning lawyer, and if such a challenge were to have been allowed, no doubt he would have made use of it; but the challenge was not taken, and if he had made such a challenge, and it had been allowed,

allowed; perhaps he could not have been tried: That was Cook. I have heard several persons tried for treason myself, and never heard it taken. Therefore I am of opinion, that before any statute was made in this case, it was the custom in London to try without freeholds, and since by the statute of Queen Mary 'tis restored.

Mr. Bar. *Street*. I think there was no such challenge at common law. The jury were only to be *probes & legales homines*, and no more; till the statute made it so, but there is a particular reservation for corporations. And certainly, if this should be admitted to be a good challenge, though it were between party and party, there would be in some corporations a perfect failure of justice. So that without doubt at common law there was no such challenge. As for the statute of H. 5. 'tis gone by that of Queen Mary. If this were admitted within London, nothing would be more mischievous to this corporation. Methinks we have been very nice in this matter, when the life of the King is at stake, and all the customs and privileges of the city of London seem to be levelled at in this point. I am of the opinion with the rest of the Judges, that this challenge ought to be over-ruled.

J. *Widdis*. I am of the same opinion.

L. C. J. My Lord, the court is of opinion, upon hearing your counsel, and the King's, that it is no good challenge to a jury in a case of treason, that he has not freehold within the city. But I must tell your Lordship withal, that your Lordship has nothing of hardship in this case, for notwithstanding that, I must tell you, you will have as good a jury, and better than you should have had in a county of 41. or 40s. a year freeholders. The reason of the law for freeholds is, that no slight persons should be put upon a jury, where the life of a man or his estate comes in question, but in the city the persons that are impan-

nelled are men of quality and substance, men that have a great deal to lose. And therefore your Lordship hath the same in substance, as if a challenge was allowed of freehold. It will be no kind of prejudice to your Lordship in this case. Therefore, if you please, apply yourself as the jury is called, and make your exceptions, if you shall make any.

L. C. J. Mr. Pollexfen, you shall have liberty to stay any where here, if you please.

Counsel. Here is such a great crowd, my Lord, we have no room.

Then the jurymen were called, and after the Lord Ruffel had challenged one and thirty of them, the jury sworn were as follows.

J U R Y.

John Martin	William Butler
William Rouse	James Pickering
Jervas Seaton	Thomas Jev
William Fashion	Hugh Noden
Thomas Short	Robert Brough
George Torriano	Thomas Omeby

Then was made proclamation for information.

Cl. of Cr. William Ruffel, Esq; hold up thy hand, (which he did.) You of the jury look upon the prisoner, and hearken to his cause. He stands indicted, by the name of ——— *prout* before in the indictment. Upon this indictment he hath been arraigned, and thereunto pleaded Not Guilty, and for his trial hath put himself upon his country, which country you are: Your charge is to inquire whether he be Guilty of this High Treason whereof he stands indicted, or Not Guilty: If you find him Guilty, you shall inquire, &c.

Mr. North, May it please your Lordship, and you that are sworn, The prisoner

at

at the bar stands charged in this indictment with no less than the conspiring the death of the King's Majesty, and that in order to the same, he did, with other traitors named in the indictment, and others not known, November 2. in the 34th year of this King, in the parish of Bishpshaw, within the city of London, meet and conspire together to bring our Sovereign Lord the King to death, to raise war and rebellion against him, and to massacre his subjects. And in order to compass these wicked designs, there being assembled, did conclude to seize the King's guards, and his Majesty's person. This is the charge, the defendant says he is not guilty, if we prove it upon him, it will be your duty to find it.

Att. Gen. My Lord, and you gentlemen of the jury, most of our evidence against this honourable person at the bar is to this purpose. This person, the Duke of Monmouth, my Lord Grey, Sir Thomas Armstrong, and Mr. Ferguson, they were the counsel of state, as I may call them, to give forth directions for the general rising that hath appeared was to have been within this kingdom. The rising was of great concern and expence; and must be managed by persons of interest, prudence, and great secrecy. These gentlemen had frequent meetings in October and November last, (for then, you may refresh your memories again, was the general rising to be) and there they did consult how to manage the rising, they consulted how to seize the King's guards; and this noble person being mixed with these others, especially with Ferguson, who with others of an inferior rank was also engaged in a cabal for managing worse things (though this is bad enough); at several meetings they receive messages from my Lord Shaftsbury touching the rising. They being looked upon as the persons they were to conclude and

scout the dimensional circumstances about it. We shall make it appear to you in the course of our evidence, that those underlings (for this was the great consult, and moved all the other wheels) who managed the assassination, did take notice that these Lords and gentlemen of quality were to manage and steer the whole business of the rising. It seems these gentlemen could not give the Earl of Shaftsbury satisfaction to his mind, for he pressed them to keep their day, which was the 17th of November last; but the honourable person at the bar, and the rest, made him this answer, that Mr. Trenchard had failed them, for that he had promised to have 1000 foot and 2 or 300 horse at four hour's warning, but now it was come to pass, he could not perform it, that some persons in the west would not join with them, and therefore at this time they could not proceed, and therefore they must defer the day. And as a counsel, they sent my Lord Shaftsbury word, he must be contented, they had otherwise resolved, and thereupon my Lord Shaftsbury went away and Mr. Ferguson with him.

To carry on this practice, they took others into their council, Sir Thomas Armstrong was left out, and there falling that scandalous report upon my Lord Grey, he was to be left out, and then there was to be a new council of six, whereas the inferior council to manage the assassination was seven. At this council there was this honourable person at the bar, the Duke of Monmouth, my Lord Howard, and another honourable person, who I am sorry to name upon this account, who hath this morning prevented the hand of justice upon himself, my Lord of Essex, and Colonel Sidney, and Mr. Hambden. These six had their frequent consults at this honourable person's house; for they had excluded Sir Thomas

was Armstrong, and my Lord Grey, for those gentlemen would have the face of religion, and my Lord Grey was in their esteem so scandalous, that they thought that would not prevail with the people, if he was of the council. There they debated how they should make this rising, after several consultations they came to this resolution; that before they did fall upon this rising, they should have an exact account both of the time and method of the Scotch rising, and thereupon a messenger was sent on purpose by Colonel Sidney, viz. Aaron Smith, to invite Scotch commissioners to treat with these noble Lords. Pursuant to this, just before the plot broke out, several from Scotland came to treat with them how to manage the work; 30,000l. was demanded by the Scots, in order that they should be ready in Scotland; then they fell to 10,000l. and at last (for the Scots love money) they fell to 5,000l. which they would take and run all hazards, but they not coming to their terms, that broke off that week the plot was discovered.

Gentlemen, if we prove all these instances, besides we shall call some to shew you that all the inferior party still looked upon these to be the heads; and though they kept it secret, God hath suffered it to come to light, with as plain an evidence as ever was heard.

Serj. *Jefferies*. I will not take up any of your Lordship's time; we will call our witnesses to prove the fact Mr. Attorney hath opened. Swear Colonel Rumsey, (Which was done.) Pray Colonel Rumsey will you give my Lord and the jury an account, from the beginning to the end, of the several meetings that were, and what were the debates of those meetings.

Col. *Rumsey*. My Lord, I was at my Lord Shaftsbury's lodging, where he lay, down by Wapping about the latter end of October, or the beginning of November,

and he told me there was met at one Mr. Sheppard's house the Duke of Monmouth, my Lord Russel, my Lord Grey, Sir Thomas Armstrong, and Mr. Ferguson, and he desired me to speak to them to know what resolution they were come to about the rising of Taunton: I did go there accordingly, and call for Mr. Sheppard, and he carried me up where they were; and the answer that was there made me was, That Mr. Trenchard had failed them, and there would be no more done in the matter at that time.

Att. Gen. Tell the whole passage.

Col. *Rumsey*. I did say my Lord Shaftsbury had sent me to know what resolution they had taken about the rising of Taunton. They made me this answer, that Mr. Trenchard had failed them, that he had promised one thousand foot and three hundred horse, but when he came to perform it, he could not. He thought the people would not meddle, unless they had some time to make provision for their families.

L. C. J. Who had you this message from?

Col. *Rumsey*. Mr. Ferguson did speak most of it.

L. C. J. Who sent this message back?

Col. *Rumsey*. Mr. Ferguson made the answer, my Lord Russel and the Duke of Monmouth were present, and I think my Lord Grey did say something to the same purpose.

Att. Gen. Pray how often were you with them at that house?

Col. *Rumsey*. I do not know, I was there more than once, I was there either another time, or else I heard Mr. Ferguson make a report of another meeting to my Lord Shaftsbury.

Serj. *Jefferies*. Was my Lord Russel in the room when this debate was?

Col. *Rumsey*. Yes, my Lord.

Att. Gen. What did they say further?

Col.

Col. Rumsey. That was all that time, that I remember.

Att. Gen. Was there nothing of my Lord Shaftsbury to be contented?

Col. Rumsey. Yes, that my Lord Shaftsbury must be contented; and upon that he took his resolution to be gone.

L. C. J. Did you hear any such resolution from him?

Col. Rumsey. Yes, my Lord.

Att. Gen. Did you know of their meeting there, or was it by my Lord Shaftsbury's direction?

Col. Rumsey. No, but my Lord told me, I should find such persons, and accordingly I found them; and this answer was given.

Att. Gen. What time did you stay?

Col. Rumsey. I think I was not there above a quarter of an hour.

Att. Gen. Was there any discourse happened while you were there about a declaration?

Col. Rumsey. I am not certain whether I did hear something about a declaration there, or that Mr. Ferguson did report it to my Lord Shaftsbury, that they had debated it.

Serj. Jefferies. To what purpose was the declaration?

L. C. J. We must do the prisoner that right; He says he can't tell whether he had it from him or Mr. Ferguson.

Att. Gen. Did you hear no discourse to what it tended?

Col. Rumsey. My Lord, there was some discourse about seeing what posture the guards were in.

One of the Jury. By whom, Sir?

Col. Rumsey. By all the company that was there.

L. C. J. What was that discourse?

Col. Rumsey. To see what posture they were in, that they might know how to surprize them.

L. C. J. The guards?

Col. Rumsey. Yes, That were at the Savoy, and the Mews.

L. C. J. Whose were the words? Tell the words as near as you can.

Col. Rumsey. My Lord, the discourse was, that some should——

L. C. J. Who made that discourse?

Col. Rumsey. My Lord, I think Sir Tho. Armstrong began it, and Mr. Ferguson.

Att. Gen. Was it discoursed among all the company?

Col. Rumsey. All the company did debate it. Afterwards they thought it necessary to see with what care and vigilance they did guard themselves at the Savoy and the Mews, whether they might be surprized or not.

Att. Gen. Were there any undertook to go and see there?

Col. Rumsey. There were some persons.

Serj. Jefferies. Name them.

Col. Rumsey. I think the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong.

Serj. Jefferies. Was my Lord Russel, the prisoner there, when they undertook to take the view?

Col. Rumsey. Yes, Sir.

Att. Gen. To what purpose was the view?

Col. Rumsey. To surprize them if the rising had gone on.

Serj. Jefferies. Did you observe by the debates that happened, that they did take notice there was a rising intended?

Col. Rumsey. Yes.

Serj. Jefferies. And that direction was given to take a view of the guards, if the rising had gone on?

Col. Rumsey. Yes.

L. C. J. Pray, Sir, declare justly the discourse.

Col. Rumsey. I went to them from my Lord Shaftsbury: And I did tell them, that my Lord did pray they would come to some resolution;

resolution; and they told me, Mr. Trenchard they depended upon, for Taunton had failed them, who when he came up to town first at the term, had assured them, that in three or four hours time, he could have one thousand foot, and three hundred horse: but now it came to be tried, he answered it was not possible for him to undertake it, for people would not rush into it of a sudden, but have some time to prepare for their families.

Att. Gen. Was it pretended there should be a rising at that time?

Col. Rumsey. Yes, the 19th of November was appointed for the rising.

L. C. J. Was it before that time, you went to press them from my Lord Shaftsbury?

Col. Rumsey. Yes, I think it was a matter of a fortnight before, or something more. For I think it was concluded Sunday fortnight after my Lord Grey met.

Att. Gen. But you say, besides what you heard there, you understood there was to be a rising at that time; was you to be engaged in this?

Col. Rumsey. Yes, I was.

L. C. J. You must speak so, that what you deliver may be sensible; for if you speak, I apprehend so and so, that will be doubtful.

Col. Rumsey. No, my Lord. the rising was determined, and I was to have gone to Bristol.

Att. Gen. In what capacity, as Colonel or Captain?

Col. Rumsey. There was no determination of that, no quality.

L. C. J. By whose appointment was that?

Col. Rumsey. My Lord Shaftsbury spake that to me.

Serj. Jefferies. But pray, Col. Rumsey, this you are very able to know, what the debates were, and need not to be pumped with so many questions; pray, was there any debate, when you came with the mel-

sage from my Lord Shaftsbury's, was there a debate about the rising?

Col. Rumsey. There was no debate of it, because they made answer, Mr. Trenchard had failed them.

Serj. Jefferies. But did not they take notice of the rising? Give an account of it.

Col. Rumsey. I have done it twice.

Jury. We desire to know the message from the Lord Shaftsbury.

L. C. J. Direct yourself to the court: Some of the gentlemen have not heard it, they desire you would with a little more loud voice repeat the message you were sent of from my Lord Shaftsbury.

Col. Rumsey. I was sent by my Lord, to know the resolution of the rising in Taunton; they answered, Mr. Trenchard, whom they depended upon for the men, had failed them, and that it must fall at that time, and my Lord must be contented.

Att. Gen. Was the prisoner at the bar present at that debate?

Col. Rumsey. Yes.

Serj. Jefferies. Did you find him averse to it, or agreeing to it?

Col. Rumsey. Agreeing to it.

Baron Street. What said my Lord Shaftsbury?

Col. Rumsey. Upon my return he said, he would be gone, and accordingly did go.

Serj. Jefferies. If my Lord Russel pleases to ask him any questions, he may.

L. Russel. Must I ask him now?

L. C. J. Yes, my Lord, propose your questions to me.

L. Russel. I have very few questions to ask him, for I know little of the matter, for it was the greatest accident in the world I was there, and when I saw that company was there, I would have been gone again. I came there accidentally to speak with Mr. Sheppard; I was just come ~~so~~ ^{to town}, but there was no discourse of surprising the guards,

guards, nor no undertaking of raising an army.

L. C. J. We will hear you to any thing by and by, by that which we now desire of your Lordship is, as the witnesses come, to know if you would have any particular questions asked of them.

L. Ruffel. I desire to know, if I gave any answer to any message about the rising: I was up and down; I do not know what they might say when I was in the room; I was tasting of wine.

L. C. J. Did you observe that my Lord Ruffel said any thing there, and what?

Col. Rumsey. Yes, my Lord Ruffel did speak.

L. C. J. About what?

Col. Rumsey. About the rising of Taunton.

L. Ruffel. It was Sir Tho. Armstrong that conversed with Mr. Trenchard.

L. C. J. What did you observe my Lord Ruffel to say?

Col. Rumsey. My Lord Ruffel did discourse of the rising.

L. Ruffel. How should I discourse of the rising at Taunton, that knew not the place, nor had knowledge of Trenchard?

Att. Gen. Now, my Lord, we will give you an account, that my Lord Ruffel appointed this place, and came in the dark without his coach.

L. Ruffel. My Lord, I think the witness was asked, if I gave my consent.

L. C. J. What say you, did my Lord give any consent to the rising?

Col. Rumsey. Yes, my Lord, he did.

Att. Gen. Pray swear Mr. Sheppard.

[Which was done.

Pray will you speak aloud, and give an account to my Lord, and the jury, of the meetings at your house, and what was done.

Mr. Sheppard. In the month of October last, as I remember, Mr. Ferguson came to me in the Duke of Monmouth's name,

and desired the conveniency of my house, for him and some other persons of quality to meet there. And as soon as I had granted it, in the evening the Duke of Monmouth, my Lord Grey, my Lord Ruffel, Sir Thomas Armstrong, Col. Rumsey, and Mr. Ferguson came. Sir Thomas Armstrong desired me, that none of my servants might come up, but they might be private; so what they wanted I went down for, a bottle of wine or so. The substance of their discourse was, how to surprize the King's guards: And in order to that, the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong, as I remember, went one night to the Mews, or thereabout, to see the King's guards. And the next time they came, to my house, I heard Sir Thomas Armstrong say, the guards were very remiss in their places, and not like soldiers, and the thing was feasible if they had strength to do it.

Att. Gen. How many meetings had you there?

Sheppard. I remember but twice, Sir.

Att. Gen. Did they meet by chance, or had you notice they would be there that night?

Sheppard. Yes, I did hear it before.

Sol. Gen. Who had you notice would be there?

Sheppard. The Duke of Monmouth, my Lord Grey, my Lord Ruffel, Sir Thomas Armstrong, Col. Rumsey, and Mr. Ferguson.

Att. Gen. Did they come with their coaches, or a foot, in the night-time, and in the dark?

Sheppard. I cannot tell; it was in the evening, I did not let them in.

Att. Gen. Were there any coaches at the door?

Sheppard. None that I heard or saw, they came not all together, but immediately one after another.

Senj.

Serj. *Jefferies*. Had they any debate before they went into the room?

Sheppard. No, they went readily into the room.

Serj. *Jefferies*. Was my Lord Russel both times there?

Sheppard. Yes, Sir, as I remember.

Serj. *Jefferies*. Had you any particular business with my Lord Russel, or he with you?

Sheppard. No, not at that time, but since I have had, about the affairs of my Lord Shaftsbury.

Serj. *Jefferies*. Do you remember, Col. Rumsey at the first time had any discourse about any private business relating to my Lord Russel?

Sheppard. No, I do not remember it.

Att. Gen. Besides the seizing of the guards, did they discourse about rising?

Sheppard. I do not remember any further discourse, for I went several times down to fetch wine, and sugar, and nutmeg, and I do not know what was said in my absence.

Serj. *Jefferies*. Do you remember any writings or papers read at that time?

Sheppard. None that I saw.

Serj. *Jefferies*. Or that you heard of?

Sheppard. Yes, now I recollect myself, I do remember one paper was read.

Serj. *Jefferies*. To what purpose was it?

Sheppard. It was somewhat in the nature of a declaration; it was read by Mr. Ferguson; who was present at the reading, I cannot say, whether they were all present, or not. The purport of it was setting forth the grievances of the nation, but truly what particulars I can't tell: It was a pretty large paper.

Att. Gen. But you can tell the effect of it, when was that to be set out?

Sheppard. It was not discoursed, it was shewn only, I suppose, for approbation.

Att. Gen. Who was it shewed to?

Sheppard. Sir Thomas Armstrong.

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Serj. *Jefferies*. Who else?

Sheppard. As I remember the Duke was present, and I think Col. Rumsey.

Col. *Rumsey*. No, I was not, it was done before I came.

Serj. *Jefferies*. What was the design of that paper? Recollect yourself, what was the design?

Sheppard. The design of that paper, was in the nature of a declaration, setting forth the grievances of the nation, in order to a rising, I suppose by the purport of the paper; but cannot remember the particular words of it.

Foreman of the Jury. Can you say my Lord Russel was there, when that declaration was read, as you call it?

Sheppard. I can't say that.

Att. Gen. But he was there when they talked of seizing the guards?

Sheppard. Yes, my Lord was there then.

L. *Russel*. Pray, Mr. Sheppard, do you remember the time when these meetings were?

Sheppard. I can't be positive as to the time, I remember it was at the time my Lord Shaftsbury was absent from his own house, and he absented himself from his own house about Michaelmas day; but I can't be positive as to the time.

L. *Russel*. I never was but once at your house, and there was no such design as I heard of. I desire that Mr. Sheppard may recollect himself.

Sheppard. Indeed, my Lord, I can't be positive in the times. My Lord, I am sure, was at one meeting.

L. *C. J.* But was he at both?

Sheppard. I think so, but it was eight or nine months go, and I can't be positive.

L. *Russel*. I can prove I was then in the country. Col. Rumsey said there was but one meeting.

Col. *Rumsey*. I do not remember I was at two; if I was not, I heard Mr. Ferguson relate

relate the debates of the other meeting to my Lord Shaftsbury.

L. Russel. Is it usual for the witnesses to hear one another?

L. C. J. I think your Lordship need not concern yourself about that, for I see the witnesses are brought in one after another.

L. Russel. There was no design.

Serj. Jefferies. He hath sworn it.

Att. Gen. Swear my Lord Howard.

[Which was done.

Pray will your Lordship give an account to the court, what you know of a rising designed before my Lord Shaftsbury went away, and afterwards how it was continued on.

L. Howard. My Lord, I appear with some confusion. Let no man wonder that it is troublesome to me. My Lord, as to the question Mr. Attorney puts to me, this is the account I have to give. It is very well known to every one, how great a ferment was made in the city, upon occasion of the long dispute about the election of sheriffs: And this soon produced a greater freedom and liberty of speech one with another, than perhaps had been used formerly, though not without some previous preparations and dispositions made to the same thing. Upon this occasion among others, I was acquainted with Captain Walcot, a person that had been some months in England, being returned out of Ireland, and who indeed I had not seen for eleven years before. But he came to me as soon as he came out of Ireland, and when these unhappy divisions came, he made very frequent applications to me; and though he was unknown himself, yet being brought by me he soon gained a confidence with my Lord Shaftsbury, and from him derived it to others, when this unhappy rent and division of mind was, he having before got himself acquainted with many persons of the city, had entered into such counsels with them, as afterwards had the effect,

which in the ensuing narrative I shall relate to your Lordship. He came to me and told me that they were now sensible all they had was going, that this force put upon them—

L. C. J. Pray, my Lord, raise your voice, else your evidence will pass for nothing.

One of the jury. We cannot hear, my Lord.

L. Howard. There is an unhappy accident happened that hath sunk my voice, I was but just now acquainted with the fate of my Lord of Essex—My Lord, I say, He came to me, and did acquaint me, that the people were now so sensible, that all their interest was going, by that violence offered to the city in their elections, that they were resolved to take some course to put a stop to it, if it were possible; he told me there were several counsels and meetings of persons about it, and several persons had begun to put themselves into a disposition, and preparation to act; that some had furnished themselves with very good horses, and kept them in the most secret and blind stables they could; that divers had intended it, and for his own part, he was resolved to embark himself in it. And having an estate in Ireland, he thought to dispatch his son thither; (for he had a good real estate, and a great stock, how he disposed of his real estate I know not;) But he ordered his son to turn his stock into money to furnish him for the occasion: This I take to be about August. His son was sent away. Soon after this, the son not being yet returned, and I having several accounts from him, wherein I found the fermentation grew higher and higher, and every day a nearer approach to action: I told him I had a necessity to go into Essex to attend the concerns of my own estate, but told him, how he might by another name convey letters to me, and gave him a little cant, by which he might blind and disguise

guise the matter he wrote about, when I was in the country. I received two or three letters from him, that gave me an account in that disguised stile, but such as I understood, that the negotiation which he had with my correspondents was going on, and in good condition; and it was earnestly desired I would come to town, this was the middle of September. I notwithstanding was willing to see the result of that great affair, upon which all men's eyes were fixed, which was the determination of the shrivality about that time. So I ordered it to fall into town, and went to my own house on Saturday night, which was Michaelmas day. On Sunday he came to me, and dined with me, and told me (after a general account given me of the affairs of the times) that my Lord Shaftsbury was secreted and withdrawn from his own house in Aldersgate-street; and that though he had a family settled, and had absconded himself from them, and divers others of his friends and confidants; yet he did desire to speak with me, and for that purpose sent him to shew me the way to his lodging; he brought me to a house at the lower end of Woodstreet, one Watson's house, and there my Lord was alone. He told me he could not but be sensible, how innocent soever he was, both he and all honest men were unsafe, so long as the administration of justice was in such hands as would accommodate all things to the humour of the court. That in the sense of this he thought it but reasonable to provide for his own safety, by withdrawing himself from his own house into that retirement. That now he had ripened affairs to that head, and had things in that preparation, that he did not doubt but he should be able, by those men that would be in readiness in London, to turn the tide, and put a stop to the torrent that was ready to overflow. But he did complain to me, that his design, and the design of the public was very much obstructed by the un-

handsome deportment of the Duke of Monmouth, and my Lord Russel, who had withdrawn themselves, not only from his assistance, but from their own engagements and appointments. For when he had got such an armed force as he had in London, and expected to have it answered by them in the country, they did recede from it, and told him they were not in a condition, or preparation in the country, to be concurrent with him at that time. This he looked upon but as an artificial excuse, and as an instance of their intentions, wholly to desert him; but notwithstanding there was such preparation made in London, that if they were willing to lose the honour of being concurrent with him, he was able to do it himself, and did intend speedily to put it into execution. I asked him, what forces he had, he said he had enough; says I, what are you assured of? Says he, there is above ten thousand brisk boys are ready to follow me, whenever I hold up my finger: Says I, how have you methoded this, that they shall not be crushed, for there will be a great force to oppose you? Yes, he answered, but they would possess themselves of the gates; and these ten thousand men in twenty-four hours, would be multiplied into five times the number, and be able to make a sally out, and possess themselves of White-hall, by beating the guards. I told him, this was a fair story, and I had reason to think, a man of his figure would not undertake a thing that might prove so fatal, unless it were laid on a foundation that might give a prudent man ground to hope it would be successful. He said he was certain of it, but confessed it was a great disappointment, that these Lords had failed him; I told him, I was not provided with an answer at that time, that he well knew me, and knew the general frame and bent of my spirit. But I told him, I looked upon it as dangerous, and ought to be laid deep, and to be very well weighed and considered.

sidered of; and did not think it a thing fit to be entered upon, without the concurrence of those Lords; and therefore desired, before I discovered my own inclination, to discourse with those Lords. He did consent, with much ado; but, says he, you will find they will wave it, and give doubtful and deferring answers, but you will find this a truth. I went to Moor-Park the nextday, where the Duke of Monmouth was, and told him the great complaint my Lord Shaftsbury had made, that he failed him; says he, I think he is mad, I was so far from giving him any encouragement, that I did tell him from the beginning, and so did my Lord Russel, there was nothing to be done by us in the country at that time. I did not then own I had seen my Lord, but speak as if this were brought me by a third person, because he had not given me liberty to tell them where his lodging was. Says I, my Lord, I shall be able to give a better account of this in a day or two. Shall I convey it to my Lord, that you are willing to give a meeting? Yes, says he, with all my heart. This was the second, third, or fourth of October; I came to town on Saturday, and was carried to him on Monday: and I suppose this was Tuesday the second of October: On Wednesday I think I went to him again (but it is not very material) and told him I had been with the Duke of Monmouth, and given him a punctual account of what I had from him; and the Duke did absolutely disown any such thing, and told me, he never did give him any encouragement to proceed that way, because the countries were not in a disposition for action, nor could be put in readiness at that time: Says my Lord Shaftsbury, it is false; they are afraid to own it. And, says he, I have reason to believe, there is some artificial bargain between his father and him, to save one another: For when I have brought him to action, I could never get

him to put on, and therefore I suspect him: And, says he, several honest men in the city have puzzled me, in asking how the Duke of Monmouth lived: Says he, they puzzled me, and I could not answer the question; for I know he must have his living from the King: and says he, we have different prospects; we are for a common-wealth, and he hath no other design but his own personal interest, and that will not go down with my people now, (so he called them) they are all for a common-wealth: And then says he, it is to no purpose for me to see him; it will but widen the breach, and I dare not trust him to come hither. Says I, My Lord, that's a good one indeed, dare not you trust him, and yet do you send me to him on this errand? Nay, says he, it is because we have had some misunderstanding of late; but I believe he is true enough to the interest. Says I, it is a great unhappiness to take this time to fall out; and I think it is so great a design, that it ought to be undertaken with the greatest strength and coalition in the kingdom. Says he, my friends are now gone so far, that they cannot pull their foot back again without going further; for, says he, it hath been communicated to so many, that it is impossible to keep it from taking air, and it must go on. Says he, we are not so unprovided as you think for; there are so many men, that you will find as brisk men as any in England. Besides, we are to have 1000 or 1500 horse, that are to be drawn by insensible parties into town, that when the insurrection is, shall be able to scour the streets, and hinder them from forming their forces against us. My Lord, after great enlargement upon this head, and heads of the like nature, I told him I would not leave him thus, and that nothing should satisfy me, but an interview between him and the Lords: No, I could not obtain it: But if I would go and tell them what a forwardness he was in, and that, if they would do

do themselves right, by putting themselves upon correspondent action in their respective places, and where their interest lay well, otherwise he would go away without them. So I went again to the Duke of Monmouth, I spake to him only (I never spake to my Lord Russel then; only we were together, but I had never come to any close conjunction of counsels in my life with him at that time.) Says I to the Duke, this man is mad, and his madness will prove fatal to us all, he hath been in a fright by being in the tower, and carries those fears about him, that cloud his understanding: I think his judgment hath deserted him, when he goes about with those strange sanguine hopes, that I cannot see what should support him in the ground of them. Therefore says I, Pray will you give him a meeting? God-so, says the Duke, with all my heart, and I desire nothing more. Now, I told him, I had been with my Lord Shaftsbury, with other enlargements that I need not trouble your Lordship with: Well, says he, pray go to him, and try if it be possible to get a meeting: So I went to him, and told him; says I, this is a great unhappiness, and it seems to be a great absurdity, that you are so forward to act alone in such a thing as this. Pray, says I, without any more to do, since you have this confidence to send for me, let me prevail with you to meet them, and give them an interview, or else you and I must break. I will no longer hold any correspondence, unless it be so. Says he, I tell you they will betray me. In short, he did with much importunity yield, that he would come out the next night in a disguise. By this time it was Saturday, I take it to be the sixth of October, an almanack will settle that: So the next night being Sunday, and the shops shut, he would come out in a concealment, be carried in a coach, and brought to his own house, which he thought then was safest. I came and

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gave the Duke of Monmouth an account of it; the Duke, I suppose, conveyed the same understanding to my Lord Russel; and, I suppose, both would have been there accordingly, to have given the meeting; but next morning I found Colonel Rumley had left a note at my house, that the meeting could not be that day. Then I went to the Duke of Monmouth, and he had had the account before, that my Lord Shaftsbury did apprehend himself to be in some danger in that house, and that the apprehension had occasioned him to remove; but we should be sure to hear from him in two or three days. We took it as a waver, and thought he did from thence intend to abscond himself from us, and it proved so to me, for from that time I never saw him. But Captain Walcot came to me, and told me, that he was withdrawn, but it was for fear his lodging might be discovered, but he did not doubt, but in a week he would let me know where his lodging was. But told me within such a time, which I think was eight or ten days, there would be arising; and I told the Duke of Monmouth, and I believe he told my Lord Russel; and we believed his frenzy was now grown to that height, that he would rise immediately, and put his design in execution; so we endeavoured to prevent it. Upon which my Lord Russel. (I was told) and the Duke of Monmouth, did force their way to my Lord Shaftsbury's, and did persuade him to put off the day of his rendezvous. I had not this from my Lord Russel, for I had not spoke a word to him; but the Duke told me, my Lord Russel had been with him (I had indeed an intimation that he had been with him; but the Duke told me, says he, I have not been with him, but my Lord Russel was, having been conveyed by Colonel Rumley. After this day was put off, it seems it was put off with this condition, that those Lords, and divers others, should be in a

readiness.

readiness to raise the country about that day fortnight, or thereabouts; for there was not above a fortnight's time given: And says the Duke of Monmouth, we have put it off, but now we must be in action, for there's no holding it off any longer. And, says he, I have been at Wapping all night, and I never saw a company of bolder, and brisker fellows in my life: And, says he, I have been round the Tower, and seen the avenues of it; and I do not think it will be hard, in a little time, to possess ourselves of it: But, says he, they are in the wrong way, yet we are engaged to be ready for them in a fortnight, and therefore, says he, now we must apply ourselves to it as well as we can. And thereupon I believe they did send into the country; and the Duke of Monmouth told me, he spake to Mr. Trenchard, who was to take particular care of Somersetshire, with this circumstance: Says he, I thought Mr. Trenchard had been a brisker fellow; for when I told him of it, he looked so pale, I thought he would have swooned, when I brought him to the brink of action; and said, I pray go and do what you can among your acquaintance: And truly, I thought it would have come then to action. But I went the next day to him, and he said it was impossible; they could not get the gentlemen of the country to stir yet.

L. Russell. My Lord, I think I have very hard measure, here is a great deal of evidence by hear-say.

L. C. J. This is nothing against you, I declare it to the jury.

Att. Gen. If it please you, my Lord, go on in the method of time. This is nothing against you, but it's coming to you, if your Lordship will have patience, I assure you.

L. Howard. This is just in the order it was done. When this was put off, then they were in a great hurry; and Captain Walcot had been several times with me,

and discoursed of it. But upon this disappointment they said, it should be the dishonour of the Lords, that they were backward to perform their parts; but still they were resolved to go on. And this had carried it to the latter end of October. About the 17th or 18th, Captain Walcot came to me, and told me, now they were resolved positively to rise, and did believe that a smart party might perhaps meet with some great men. Thereupon I told the Duke of it; I met him in the street, and went out of my own coach into his, and told him, that there was some dark intimation, as if there might be some attempt upon the King's person; with that he struck his breast with a great emotion of spirit, and said, God-so, Kill the KING: I will never suffer that. Then he went to the Playhouse to find Sir Tho. Armstrong, and send him up and down the city to put it off, as they did formerly; and it was done with that success, that we were all quieted in our minds, that at that time nothing would be done. But upon the day the King came from Newmarket, we dined together; the Duke of Monmouth was one, and there we had a notion conveyed among us, that some bold action should be done that day; which comparing it with the King's coming, we concluded it was designed upon the King. And I remember my Lord Grey, says he, by God, if they do attempt any such thing, it can't fail. We were in great anxiety of mind, till we heard the King's coach was come in, and Sir Thomas Armstrong not being there, we apprehended he was to be one of the party (for he was not there.) This failing, it was then next determined (which was the last alarm and news I had of it) to be done upon the 17th of November, the Anniversary of Queen Elizabeth; and I remember it by this remark I made myself, that I fear'd it had been discovered, because I saw a proclamation a little before, forbidding public bonfires

bonfires without leave of my Lord Mayor. It made some impressions upon me, that I thought they had got an intimation of our intention, and had therefore forbid that meeting. This therefore of the 17th of November being also disappointed, and my Lord Shaftsbury, being told things were not ripe in the country, took shipping and got away; and from that time I heard no more of him till I heard he was dead. Now, Sir, after this we all began to lie under the same sense and apprehensions that my Lord Shaftsbury did, that we had gone so far, and communicated it to so many, that it was unsafe to make a retreat; and this being considered, it was also considered that so great an affair as that was, consisting of such infinite particulars, to be managed with so much fineness, and to have so many parts, it would be necessary, that there should be some general council, that should take upon them the care of the whole. Upon these thoughts we resolved to erect a little cabal among ourselves, which did consist of six persons; and the persons were, The Duke of Monmouth, my Lord of Essex, my Lord Russell, Mr. Hambden, jun. Algernoon Sidney, and myself.

Att. Gen. About what time was this, when you settled this council?

L. Howard. It would have been proper for me in the next place to tell you that, and I was coming to it. This was about the middle of January last (as near as I can remember;) for about that time we did meet at Mr. Hambden's house.

Att. Gen. Name those that met.

L. Howard. All the persons I named before; that was, the Duke of Monmouth, my Lord Essex, my Lord Russell, Col. Sidney, Mr. Hambden, jun. and myself. When we met there, it was presently agreed what their proper province was, which was to have a care of the whole: And therefore it was necessary some general things should fall under our care and conduct, which

could not possibly be conducted by individual persons. The things that did principally challenge this care, we thought were these; whether the insurrection was most proper to be begun in London, or in the country, or both at one instant. This stood upon several different reasons: It was said in the country; and I remember the Duke of Monmouth insisted upon it, that it was impossible to oppose a formed, well-methodized, and governed force, with a rabble hastily got together; and therefore whatever numbers could be gathered in the city, would be suppressed quickly before they could form themselves: Therefore it would be better to begin it at such a distance from the town, where they might have an opportunity of forming themselves, and would not be subject to the like panic fear, as in the town, where half an hour would convey the news to those forces, that in another half hour would be ready to suppress them.

Att. Gen. Was this determined among you all?

L. Howard. In this manner that I tell you, why it was necessary to be done at some reasonable distance from the town. And from thence it was likewise considered, that the being so remote from the town, it would put the King upon this dilemma, that either the King would send his forces to subdue them, or not; if he did, he must leave the city naked, who being *proximi dispositioni* to action, it would give them occasion to rise, and come upon the back of the King's forces; if he did not send, it would give them time to form their number, and be better ordered.

Att. Gen. My Lord, we do not desire all your discourse and debates; what was your other general thing?

L. Howard. The other was, what countries and towns were the fittest and most disposed to action: And the third, what arms were necessary to be got, and how to be

be disposed: And a fourth (which should have been indeed first in consideration) propounded by the Duke of Monmouth, That it would be absolutely necessary to have some common bank of 25 or 30,000*l.* to answer the occasions of such an undertaking. Nothing was done, but these things were offered then to our consideration, and we were to bring our united advice concerning them. But the last and greatest was, how we might so order it, as to draw Scotland into a consent with us, for we thought it necessary that all the diversion should be given. This was the last.

Att. Gen. Had you any other meetings?

L. Howard. We had about ten days after this at my Lord Russel's.

Att. Gen. The same persons?

L. Howard. Every one of the same persons then meeting.

Att. Gen. What debate had you there?

L. Howard. Then it was so far, as we came to a resolution, that some persons should be sent to my Lord Argyle, to settle an understanding with him, and that some messengers should be dispatched into Scotland, that should invite some persons hither, that were judged most able to understand the estate of Scotland, and give an account of it: The persons agreed on were, Sir John Cockram, my Lord Melville, and another, whose name I have since been told upon my description, Sir — Cambel. For this purpose we did order a person should be thought on that was fit —

Att. Gen. Do you know who was sent, and what was done upon this resolution?

L. Howard. I have heard (I never saw him in six months before) that Aaron Smith was sent:

Att. Gen. Who was intrusted to take care of that business?

L. Howard. Colonel Sidney. We, in discourse, did agree to refer it to Colonel Sidney to have the care of sending a person.

Att. Gen. Who acquainted you Aaron Smith was sent?

L. Howard. Colonel Sidney told me he had sent him, and given him sixty guineas for his journey.

Att. Gen. What more meetings had you?

L. Howard. We did then consider that these meetings might have occasioned some observation upon us, and agreed not to meet again till the return of that messenger. He was gone, I believe, near a month before we heard any thing of him, which we wondered at, and feared some miscarriage, but if his letter had miscarried, it could have done no great hurt, for it carried only a kind of cant in it; it was under the disguise of a plantation in Carolina.

Att. Gen. You are sure my Lord Russel was there?

L. Howard. Yes, Sir, I wish I could say he was not.

Att. Gen. Did he sit there as a cypher, what did my Lord say?

L. Howard. Every one knows my Lord Russel is a person of great judgment, and not very lavish in discourse.

Serj. Jefferies. But he did consent?

L. Howard. We did not put it to the vote, but it went without contradiction, and I took it that all there gave their consent.

Sol. Gen. The raising of money you speak of, was that put into any way?

L. Howard. No, but every man was to put themselves upon thinking of such a way, that money might be collected without administering jealousy.

Att. Gen. Were there no persons to undertake for a fund?

L. Howard. No, I think not. However, it was but opinion, the thing that was said, was jocosely, rather than any thing else, that my Lord of Essex had dealing in money, and therefore he was thought the most proper person to take the care of those things;

things; but this was said rather by way of mirth, than otherwise.

Att. Gen. What do you know else, my Lord?

L. Howard. I was going to tell you, I am now at a full stop. For it was six weeks or more, before Smith's return, and then drew on the time, that it was necessary for me to go into Essex, where I had a small concern; there I staid about three weeks; when I came back, I was informed that he was returned, and Sir John Cockram was also come to town.

L. C. J. Did you meet after this?

L. Howard. No, my Lord. I tell you, that I was forced to go three weeks upon the account of my estate, and afterwards I was necessitated to go to the Bath, where I spent five weeks, and the time of coming from the Bath to this time, is five weeks more; so that all this time hath been a perfect parenthesis to me, and more than this, I know not.

L. C. J. My Lord Ruffel, now, if your Lordship pleases, is the time for you to ask him any questions.

L. Ruffel. The most he hath said of me, my Lord, is only hear-say, the two times we met, it was upon no formed design, only to talk of news, and talk of things in general.

L. C. J. But I will tell you what it is he testifies, that comes nearest your Lordship, that so you may consider it, if you will ask any questions. He says, after my Lord Shaftsbury went off (all before is but inducement as to any thing that concerns your Lordship, and does not particularly touch you) after his going away, he says the party concerned with my Lord Shaftsbury did think fit to make choice of six persons to carry on the design of an insurrection or rising, as he calls it, in the kingdom. And that to that purpose choice was made of the Duke of Monmouth, my Lord

of Essex, your Lordship, my Lord Howard, Colonel Sidney, and Mr. Hambden.

L. Ruffel. Pray, my Lord, not to interrupt you, by what party (I know no party) were they chosen?

L. Howard. 'Tis very true, we were not chosen by community, but did direct ourselves by mutual agreement, one with another into this society.

L. Ruffel. We were people that did meet very often.

L. C. J. Will your Lordship please to have any other questions asked of my Lord Howard?

L. Ruffel. He says it was a formed design, when we met about no such thing.

L. C. J. He says, that you did consult among yourselves, about the raising of men, and where the rising should first be, whether in the city of London, or in more foreign parts, that you had several debates concerning it; he does make mention of some of the Duke of Monmouth's arguments for its being formed in places from the city; he says, you did all agree not to do any thing further in it, till you had considered how to raise money and arms: And to engage the kingdom of Scotland in this business with you; that it was agreed among you, that a messenger should be sent into the kingdom of Scotland. Thus far he goes upon his own knowledge, as he saith, what he says after, of sending a messenger, is by report only.

Att. Gen. I beg your pardon, my Lord.

L. C. J. 'Tis so, that what he heard concerning the sending of Aaron Smith.

Att. Gen. Will you ask him any questions?

L. Ruffel. We met, but there was no debate of any such thing, nor putting any thing in method. But my Lord Howard is a man hath a voluble tongue, talks very well, and is full of discourse, and we were delighted to hear him.

Att. Gen.

Att. Gen. I think your Lordship did mention the Cambells?

L. Howard. I did stammer it out, but not without a parenthesis, it was a person of the alliance, and I thought of the name of the Argyles.

L. Ruffel. I desire your Lordship to take notice, that none of these men I ever saw; my Lord Melville I have seen, but not upon this account.

Mr. Atterbury sworn.

Att. Gen. Aaron Smith did go, and Cambell he went for, is here taken. This is the messenger. Pray what do you know of the apprehending of the Cambells?

Mr. Atterbury. If it please your Lordship, I did not apprehend Sir Hugh Cambell myself, but he is now in my custody; he was making his escape out of a Wood-monger's house, both he and his son.

Att. Gen. How long did he own he had been at London?

Atterbury. Four days, and that in that time he had been at their lodgings; and that he and his son, and one Baily, came to town together.

Att. Gen. My Lord, we shall besides this, (now we have fixed this upon my Lord) give you an account, that these persons, that were to rise, always took them as their pay-masters, and expected their assistance. Mr. West, Mr. Keeling, and Mr. Leigh.

Mr. West sworn.

Att. Gen. That which I call you to, is to know whether or no, in your managery of this plot, you understood any of the Lords were concerned, and which?

West. My Lord, as to my Lord Ruffel, I never had any conversation with him at all, but that I have heard in this, That in the insurrection in November, Mr. Fer-

guson, and Colonel Rumsey, did tell me that my Lord Ruffel intended to go down and take his post in the west, when Mr. Trenchard had failed them.

L. C. J. What is this?

Att. Gen. We have proved my Lord privy to the consults, now we go about to prove the under-actors did know it.

West. They always said my Lord Ruffel was the man they most depended upon, because he was a person looked upon as of great sobriety.

L. Ruffel. Can I hinder people from making use of my name? To have this brought to influence the gentlemen of the jury, and inflame them against me, is hard.

L. C. J. As to this, the giving evidence by hear-say, will not be evidence; what Colonel Rumsey or Mr. Ferguson told Mr. West, is no evidence.

Att. Gen. 'Tis not evidence to convict a man, if there were not plain evidence before, but it plainly confirms what the other swears. But, I think we need no more.

Serj. Jefferies. We have evidence without it, and will not use any thing of garniture; we will leave it as 'tis, we won't trouble your Lordship any further. I think, Mr. Attorney, we have done with our evidence.

L. C. J. My Lord Ruffel, the King's counsel do think to rest upon this evidence that they have given against your Lordship. I would put your Lordship in mind of those things that are material in this case, and proved against your Lordship; here is Colonel Rumsey does prove against your Lordship this, that he was sent upon an errand, which in truth, was traiterous, it was a traiterous errand sent from my Lord Shaftsbury, by him to that meeting. He does swear your Lordship was at that meeting, and he delivered his errand to them, which was to know what account could be given

given concerning the design of the insurrection at Taunton; and he says, your Lordship being there, this return was made, that Mr. Trenchard had failed them in his undertaking in the business, and therefore my Lord Shaftsbury must be contented, and sit down satisfied as to that time. Mr. Sheppard does likewise speak of the same time, that your Lordship was there with the rest of the persons, the Duke and others; that there was a discourse concerning an insurrection to have been made, (though he is not so particular as to the very notion of it, as Colonel Rumsey is) as to the time they do agree.

L. Ruffel. Col. Rumsey is not positive that I said or heard any thing.

L. C. J. My Lord, if you will have a little patience to hear me, I will tell you what it is presses you; there is this which I have mentioned, and Mr. Sheppard does say, there was a paper purporting a declaration then read among the company there, which was to be printed upon the rising, setting forth the oppressions and grievances of the nation: And then my Lord Howard (after a great discourse concerning the many designs of my Lord Shaftsbury) comes particularly to your Lordship and says, that six of you, as a chosen council among yourselves, (not that you were actually chosen) but as a chosen council among yourselves, did undertake to manage the great matter of the insurrection, and raising of men in order to surprize the King's guards, and for to raise (which is a rebellion in the nation.) He says, that you had several consults concerning it. I told you the several particulars of those consults he mentioned: Now it is fit for your Lordship, and 'tis your time to give some answer to these things.

L. Ruffel. My Lord, I cannot but think myself mighty unfortunate to stand here charged with so high and heinous a crime, and that intricately and intermixed with the

treasons and horrid practices and speeches of other people, the King's counsel taking all advantages, and improving and heightening things against me. I am no lawyer, a very unready speaker, and altogether a stranger to things of this nature, and alone, and without counsel. Truly my Lord, I am very sensible, I am not so provided to make my just defence as otherwise I should do. But my Lord, you are equal, and the gentleman of the jury, I think, are men of consciences, they are strangers to me, and I hope they value innocent blood, and will consider the witnesses that swear against me, swear to save their own lives; for howsoever legal witnesses they may be accounted they can't be creditable. And for Col. Rumsey, who 'tis notoriously known hath been so highly obliged by the King and the Duke, for him to be capable of such a design of murdering the King! I think nobody will wonder, if to save his own life, he will endeavour to take away mine; neither does he swear enough to do it. And then if he did, the time by the 13th of this King is elapsed, it must be, as I understand by the law, prosecuted within six months; and by the 25 E. 3. a design of levying war is no treason unless by some overt-act it appear. And, my Lord, I desire to know what statute I am to be tried upon, for generals, I think, are not to be gone upon in these cases.

L. C. J. (To the Attorney-General.) Mr. Attorney, you hear what it is my Lord objects to this evidence, he says, that as to those witnesses that testify any thing concerning him, above six months before he was prosecuted, he conceives the act of Parliament, upon which he takes himself to be indicted, does not extend to it, for that says that within six months there ought to have been a prosecution; and my Lord tells you, that he is advised, that a design of levying war, without actual levying of war, was no treason before that statute.

Att. Gen.

Att. Gen. To satisfy my Lord, he is not indicted upon that statute, we go upon the 25 E. 3. But then for the next objection, surely my Lord is informed wrong. To raise a rebellion or a conspiracy within the kingdom, is it not that which is called levying of war in that statute, but to raise a number of men to break prisons, &c. which is not so directly tending against the life of the King. To prepare forces to fight against the King, that is a design within that statute to kill the King; and to design to depose the King, to imprison the King, to raise the subjects against the King, these have been settled by several resolutions to be within that statute, and evidences of a design of killing the King.

L. Russel. My Lord, this is a matter of law; neither was there but one meeting at Mr. Sheppard's house.

Att. Gen. My Lord, if you admit the fact, and will rest upon the point of law, I am ready to argue it with any of your counsel. I will acquaint your Lordship how the evidence stands. There is one evidence since Christmas last.

L. Russel. That's not the business of Sheppard's house. My Lord, one witness will not convict a man of treason.

Att. Gen. If there be one witness of one act of treason, and another of a second, another of a third, that manifest the same treason to depose or destroy the King, that will be sufficient.

L. C. J. My Lord, that has been resolved, the two witnesses the statute requires, are not to the same individual act, but to the same treason, if they be several acts declaring the same treason, and one witness to each of them, they have been reckoned two witnesses within the statute of Edw. 6.

Serj. Jefferies. If my Lord will call his witness—

L. Russel. This is tacking of two treasons together, here is one in November by one witness, and then you bring on another

with a discourse of my Lord Howard and he says the discourse passed for pleasure.

L. C. J. If your Lordship do doubt whether the fact proved against your Lordship be treason or not within the statute of E. 3. and you are contented that the fact be taken as proved against your Lordship, and so desire counsel barely upon that, that is matter of law. You shall have it granted.

L. Russel. I am not knowing in the law. I think 'tis not proved, and if it was, I think it's not punishable by that act. I desire counsel may be admitted upon so nice a point. My life lies at stake; here's but one witness that speaks of a message.

Serj. Jefferies. The fact must be left to the jury, therefore if my Lord Russel hath any witnesses to call, in opposition to these matters, let him.

L. C. J. My Lord, there can be no matter of law but upon a fact admitted and stated.

L. Russel. My Lord, I do not think it proved, I hope you will be of counsel for me; it's very hard for me that my counsel may not speak for me in a point of law.

L. C. J. My Lord, to hear your counsel concerning this fact, that we cannot do, it was never done, nor will be done. If your Lordship doubts whether this fact is treason or not, and desire your counsel may be heard to that, I will do it.

L. Russel. I doubt in law, and do not see the fact is proved upon me.

Sol. Gen. Will your Lordship please to call any witness to the matter of fact?

L. Russel. 'Tis very hard a man must lose his life upon hear-say. Colonel Rumsey says he brought a message, which I will swear I never heard nor knew of. He does not say he spake to me, or I gave him any answer. Mr. Sheppard remembers no such thing, he was gone to and again, here is but one witness, and seven months ago.

Att. Gen.

Att. Gen. My Lord, if there be any thing that is law, you shall have it.

L. Russel. My Lord, Colonel Rumsey, they other day before the King, could not say that I heard it, I was in the room, but I came in late, they had been there a good while; I did not stay above a quarter of an hour talking sherry with Mr. Sheppard.

L. C. J. Read the statute of 25 E. 3. c. 2. My brothers desire to have it read.

Cl. of Cr. "Whereas divers opinions have been before this time, in what case treason shall be laid, and in what not: The King at the request of the Lords and of the Commons, hath made a declaration in the manner as hereafter followeth. That is to say, when a man doth compass or imagine the death of our Lord the King, or of our Lady his Queen, or of their eldest son and heir; or if a man do violate the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir; or if a man do levy war against our Lord the King in his realm, or be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and therefore be proveable attainted of open deed by people of their condition. And if a man counterfeit the King's great or privy seal, or his money: And if a man bring false money into this realm, counterfeit to the money of England, as the money called Luthburgh, or other like to the said money of England, knowing the money to be false, to merchandise or make payment in deceit of our said Lord the King, and of his people: And if a man plea the Chancellor, Treasurer, or the King's Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize, and all other Justices designed to hear and determine, being in their places during their offices. And it is to be understood that in the cases above rehearsed, that ought to be judged treason,

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which extends to our Lord the King, and his Royal Majesty."

L. C. J. My Lord, that which is urged against you by the King's counsel, is this, You are accused by the indictment of compassing and designing the King's death, and of endeavouring to raise an insurrection in order to it; that, that they do say, is, that these councils that your Lordship hath taken, are evidences of your compassing the King's death; and are overt-acts, declaring the same; and upon that it is they insist your Lordship to be guilty within that statute.

L. Russel. It is in a point of law, and I desire counsel.

Att. Gen. Admit your consultations, and we will hear them.

L. C. J. I would set your Lordship right, for probably you may not apprehend the law in this case; If your counsel be heard, they must be heard to this, That taking it, that my Lord Russel has consulted in this manner, for the raising of forces within this kingdom, and making an insurrection within this kingdom, as Colonel Rumsey and my Lord Howard have deposed, whether then this be treason, we can hear your counsel to nothing else.

L. Russel. I do not know how to answer to it. The point methinks must be quite otherwise, that there should be two witnesses to one thing at the same time.

Att. Gen. Your Lordship remembers, in my Lord Stafford's case, there was but one witness to one act in England, and another to another in France.

L. Russel. It was to the same point.

Att. Gen. To the general point, the looping point.

Serj. Jefferies. There was not so much evidence against your Lordship.

L. C. J. My Lord, if your Lordship will say any thing, or call any witnesses to disprove what either of these gentlemen

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have

have said, we will hear your Lordship what they say. But if you can't contradict them by testimony, it will be taken to be a proof. And the way you have to disprove them, is to call witnesses, or by asking questions, whereby it may appear to be untrue.

Sol. Gen. If you have any witnesses, call them, my Lord.

L. Russel. I do not think they have proved it. But then it appears by the statute, that levying war is treason, but a conspiracy to levy war is no treason, if nothing be done, 'tis not levying war within the statute. There must be manifest proof of the matter of fact, not by inference.

Att. Gen. I see that is taken out of my Lord Coke. Levying war is a distinct branch of the statute, and my Lord Coke explains himself afterwards, and says, 'tis an assuming of royal power, to raise for particular purposes.

Just. Withins. Unless matter of fact be agreed, we can never come to argue the law.

L. Russel. I came in late.

Sol. Gen. Pray, my Lord, has your Lordship any witnesses to call, as to this matter of fact?

L. Russel. I can prove I was out of town when one of the meetings was, but Mr. Sheppard can't recollect the day, for I was out of town all that time. I never was but once at Mr. Sheppard's, and there was nothing undertaken of viewing the guards while I was there; Colonel Rumsey, can you swear positively, that I heard the message, and gave any answer to it?

L. C. J. (To Colonel Rumsey.) Sir, did my Lord Russel hear you, when you delivered the message to the company? Were they at the table, or where were they?

Col. Rumsey. When I came in they were standing at the fire-side, but they all came from the fire-side to hear what I said.

L. Russel. Colonel Rumsey was there when I came in.

Col. Rumsey. No, my Lord. The Duke of Monmouth and my Lord Russel went away together, and my Lord Grey and Sir Thomas Armstrong.

L. Russel. The Duke of Monmouth and I came together, and you were standing at the chimney when I came in; you were there before me. My Lord Howard had made a long narrative here of what he knew, I do not know when he made it, or when he did recollect any thing; 'tis but very lately, that he did declare and protest to several people, that he knew nothing against me, nor of any plot I could in the least be questioned for.

L. C. J. If you will have any witnesses called to that, you shall, my Lord.

L. Russel. My Lord Anglesey, and Mr. Edward Howard.

My Lord Anglesey stood up.

L. C. J. My Lord Russel, what do you ask my Lord Anglesey?

L. Russel. To declare what my Lord Howard told him about me, since I was confined.

L. Anglesey. My Lord, I chanced to be in town the last week, and hearing my Lord of Bedford was in some distress and trouble, concerning the affliction of his son, I went to give him a visit, being my old acquaintance of some fifty-three years standing, I believe, for my Lord and I were bred together at Maudlin-Colledge in Oxon, I had not been there but a very little while, and was ready to go away again, after I had done the good office I came about, but my Lord Howard came in, I do not know whether he be here.

L. Howard. Yes, here I am to serve your Lordship.

L. Anglesey. And sat down on the other side of my Lord of Bedford, and he began to

to comfort my Lord, and the arguments he used for his comfort, were, My Lord, you are happy in having a wife son, and a worthy person, one that can never sure be in such a plot as this, or suspected for it, and that may give your Lordship reason to expect a very good issue concerning him, I know nothing against him, or any body else, of such a barbarous design, and therefore your Lordship may be comforted in it. I did not hear this only from my Lord Howard's mouth, but at my own home upon the Monday after, for I use to go to Totteridge for fresh air: I went down on Saturday, this happened to be on Friday, (my Lord being here, I am glad, for he cannot forget this discourse,) and when I came to town on Monday, I understood that my Lord Howard upon that very Sunday had been at church with my Lady Chaworth. My Lady has a chaplain, it seems, that preaches there, and does the offices of the church, but my Lady came to me in the evening. This I have from my Lady——

L. C. J. My Lord, what you have from my Lady is no evidence at all.

L. Anglesey. I do not know what my Lord is, I am acquainted with none of the evidence, nor what hath been done. But my Lady Chaworth came to me, and acquainted me, there was some suspicion——

Serj. Jefferies. I do not think it fit for me to interrupt a person of your honour, my Lord, but your Lordship knows in what place we stand here, what you can say of any thing you have heard of my Lord Howard, we are willing to hear, but the other is not evidence. As the court will not let us offer hear-says, so neither must we that are for the King permit it.

L. Anglesey. I have told you what happened in my hearing.

Then Mr. Howard stood up.

L. C. J. Come Mr. Howard, what do you know?

Mr. Howard. I must desire to say something of my self and my family first. My Lord and I have been very intimate, not only as relations, but as dear friends. My Lord, I have been of a family known to have great respect and duty for the King, and I think there is no family in the nation so numerous, that hath expressed greater loyalty, upon which account I improved my interest in my Lord Howard; I endeavoured, upon the great misunderstanding of the nation, (if he be here he knows it,) to persuade him to apply himself to the King, to serve him in that great difficulty of state, which is known to all the world. I sometimes found my Lord very forward, and sometimes I softened him, upon which partly, upon his permission, and more upon my own inclination to duty, I made several applications to ministers of state, (and I can name them) that my Lord Howard had a great desire of serving the King in the best way of satisfaction, and particularly in the great business of his brother. I wondered there should be so much sharpness for a matter of opinion, and I told my Lord so, and we had several disputes about it. My Lord, I do say this before I come to the thing. After this I did partly by his permission, and partly by my own inclination, to serve the King, because I thought my Lord Howard to be a man of parts, and saw him a man that had interest in the nation, tell my Lord Feversham, that I had prevailed with a relation of mine, that may be he might think opposite, that perhaps might serve the King in this great difficulty that is emergent, and particularly that of his brother. My Lord Feversham did receive it very kindly, and I writ a letter to him to let him know how I had softened my Lord, and that it was my desire he should speak with my Lord at Oxon. My Lord Feversham gave me a very kind account when he came again, but he told me——

L. C. J.

L. C. J. Pray apply yourself to the matter you are called for.

Howard. This it may be is to the matter; when you have heard me; for I think I know where I am, and what I am to say.

L. C. J. We must desire you not to go on thus.

Howard. I must satisfy the world, as well as I can, as to myself, and my family, and pray do not interrupt me. After this, my Lord, there never passed a day for almost—

L. C. J. Pray speak to this matter.

Howard. Sir, I am coming to it.

L. C. J. Pray, Sir, be directed by the court.

Howard. Then now, Sir, I will come to the thing. Upon this ground I had of my Lord's kindness, I applied myself to my Lord in this present issue, on the breaking out of this plot. My Lord, I thought certainly, as near as I could discern him, (for he took it upon his honour, his faith, and as much as if he had taken an oath before a magistrate,) that he knew nothing of any man concerned in this business, and particularly of my Lord Russel, whom he vindicated with all the honour in the world. My Lord, it is true, was afraid of his own person, and as a friend, and a relation, I concealed him in my house, and I did not think it was for such a conspiracy, but I thought he was unwilling to go the tower for nothing again. So that if my Lord Howard has the same soul on Monday that he had on Sunday, this cannot be true that he swears against my Lord Russel. This I say upon my reputation, and honour, and something I could say more, he added, he thought my Lord Russel did not only unjustly suffer, but he took God and men to witness, he thought him the worthiest person in the world, I am very sorry to hear any man of my name should be guilty of these things.

L. Russel. Call Doctor Burnet. Pray, Doctor Burnet, did you hear any thing from my Lord Howard, since the plot was discovered, concerning me?

Burnet. My Lord Howard was with me the night after the plot broke out, and he did then, as he had done before, with hands and eyes lifted up to heaven, say he knew nothing of any plot, nor believed any, and treated it with great scorn and contempt.

L. Howard. My Lord, may I speak for myself?

Serj. Jefferies. No, no, my Lord, we don't call you.

L. C. J. Will you please to have any other witnesses called?

L. Russel. There are some persons of quality, that I have been very well acquainted and conversed with, I desire to know of them, if there was any thing in my former carriage, to make them think me like to be guilty of this? My Lord Cavendish.

L. Cavendish. I had the honour to be acquainted with my Lord Russel a long time, I always thought him a man of great honour, and too prudent and wary a man to be concerned in so vile and desperate a design as this, and from which he would receive so little advantage, I can say nothing more, but that two or three days since the discovery of this plot, upon discourse about Colonel Rumsey, my Lord Russel did express something, as if he had a very ill opinion of the man, and therefore it is not likely he would intrust him with such a secret.

L. Russel. Dr. Tillotson. [He appears.]

L. C. J. What questions would you ask him, my Lord?

L. Russel. He and I, happened to be very conversant. To know whether he did ever find any thing tending to this in my discourse?

L. C. J. My Lord calls you, as to his life, and conversation and reputation.

Tillotson.

Tillotson. My Lord, I have been many years last past acquainted with my Lord Russel, I always judged him a person of great virtue and integrity, and by all the conversation and discourse I ever had with him, I always took him to be a person very far from any such wicked design he stands charged with.

L. Russel. Doctor Burnet. If you please to give some account of my conversation.

Burnet. My Lord, I have had the honour to be known to my Lord Russel several years, and he hath declared himself with much confidence to me, and he always upon all occasions expressed himself against all risings, and when he spoke of some people that would provoke to it, he expressed himself so determined against that matter, I think no man could do more.

L. C. J. Will your Lordship call any other witnesses?

L. Russel. Doctor Cox.

Dr. Thomas Cox stood up.

Cox. My Lord, I did not expect to have been spoken to upon this account. Having been very much with my Lord of late, that is, for a month or six weeks before this plot came out, I have had occasion to speak with my Lord in private, about these public matters. But I have always found that my Lord was against all kinds of risings, and thought it the greatest folly and madness till things should come in a Parliamentary way. I have had occasion often to speak with my Lord Russel in private, and having myself been against all kind of risings, or any thing that tended to the disorder of the public, I have heard him profess solemnly, he thought it would ruin the best cause in the world to take any of these irregular ways for the preserving of it, and particularly my Lord hath expressed himself occasionally of these two persons, my Lord Howard and Colonel Rumsey.

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One of them, Colonel Rumsey, I saw once at my Lord's house, and he offered to speak a little privately. But my Lord told me he knew him but a little, I told him he was a valiant man, and acted his part valiantly in Portugal. He said he knew him little, and that he had nothing to do with him but in my Lord Shaftsbury's business. He said, for my Lord Howard, he was a man of excellent parts, of luxuriant parts, but he had the luck not to be trusted by any party. And I never heard him say one word of indecency or immodesty towards the King.

L. Russel. I would pray the Duke of Somerset, to speak what he knows of me.

D. of Som. I have known my Lord Russel for about two years, and have had much conversation with him, and been often in his company, and never heard any thing from him, but what was very honourable, loyal and just.

L. C. J. My Lord does say, that he has known my Lord Russel for about two years, and hath had much conversation with him, and been much in his company, and never heard any thing from him, but what was honourable, and loyal, and just, in his life.

Foreman of the Jury. The gentlemen of the jury desire to ask my Lord Howard something upon the point my Lord Anglesey testified, and to know what answer he makes to my Lord Anglesey.

L. C. Bar. My Lord, what say you to it, that you told his father he was a discreet man, and he needed not to fear his engagement in any such thing?

L. Howard. My Lord, if I took it right, my Lord Anglesey's testimony did branch itself into two parts, one of his own knowledge, and the other by hear-say; as to what he said of his own knowledge, when I waited upon my Lord of Bedford, and endeavoured to comfort him concerning his son, I believe I said the words my Lord Anglesey has given an account of, as near

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as I can remember, that I looked upon his Lordship, as a man of that honour, that I hoped he might be secure, that he had not entangled himself in any thing of that nature. My Lord, I can hardly be provoked to make my own defence, lest this noble Lord should suffer, so willing I am to serve my Lord, who knows I can't want affection for him. My Lord, I do confess I did say it; for your Lordship well knows under what circumstances we were, I was at that time to outface the thing, both for myself, and my party, and I did not intend to come into this place, and act this part. God knows how it is brought upon me, and with what unwillingness I do sustain it, but my duty to God, the King, and my country, requires it, but I must confess, I am very sorry to carry it on thus far. My Lord, I do confess I did say so, and if I had been to visit my Lord Pemberton, I should have said so. There is none of those that know my Lord Russel, but would speak of my Lord Russel, from those topics of honour, modesty, and integrity, his whole life deserves it. And I must confess, I did frequently say, there was nothing of truth in this, and I wish this may be for my Lord's advantage. My Lord, will you spare me one thing more, because that leans hard upon my reputation, and if the jury believe that I ought not to be believed, for I do think the religion of an oath is not tied to a place, but receives its obligation from the appeal we therein make to God, and, I think, if I called God and angels to witness to a falsehood, I ought not to be believed now. But I will tell you as to that, your Lordship knows, that very man that was committed, was committed for a design of murdering the King; now I did lay hold on that part, for I was to carry my knife close between the paring and the apple, and I did say, that if I were an enemy to my Lord Russel, and to the Duke of Monmouth, and were called to be

a witness, I must have declared in the presence of God and man, that I did not believe either of them had any design to murder the King. I have said this, because I would not walk under the character of a person, that would be perjured at the expence of so noble a person's life, and my own soul.

L. Russel. My Lord Clifford.

L. C. J. What do you please to ask my Lord Clifford?

L. Russel. He hath known my conversation for many years.

L. Clifford. I always took my Lord to be a very worthy honest man, I never saw any thing in his conversation to make me believe otherwise.

L. Russel. Mr. Gore.

Mr. Luton Gore. I have been acquainted with my Lord several years, and conversed much with him; in all the discourse I had with him, I never heard him let any thing fall that tended in the least to any rising, or any thing like it: I took him to be one of the best sons, one of the best fathers, and one of the best masters, one of the best husbands, one of the best friends, and one of the best Christians we had. I know of no discourse concerning this matter.

L. Russel. Mr. Spencer, and Dr. Fitz-Williams.

Mr. Spencer. My Lord, I have known my Lord Russel many years, I have been many months with him in his house; I never saw any thing by him, but that he was a most virtuous and prudent gentleman, and he had prayers constantly twice a day in his house.

L. C. J. What, as to the general conversation of his life, my Lord asks you, whether it hath been sober?

Mr. Spencer. I never saw any thing but very good, very prudent, and very virtuous.

L. Russel. What company did you see used to come to me?

Mr. Spencer.

Mr. Spencer. I never saw any but his near relations, or his own family. I have the honour to be related to the family.

Then *Dr. Fitz-Williams* stood up.

L. Russel. If it please you, Doctor, you have been at my house several times, give an account of what you know of me.

Dr. Fitz-Williams. I have had the knowledge of my Lord these fourteen years, from the time he was married to his present Lady, to whose father, eminent for loyalty, I had a relation by service; I have had acquaintance with him both at Stratton and Southampton Buildings, and by all the conversation I had with him, I esteemed him a man of that virtue, that he could not be guilty of such a crime as the conspiracy he stands charged with.

L. C. J. My Lord, does your Lordship call any more witnesses?

L. Russel. No, my Lord, I will be very short. I shall declare to your Lordship that I am one that have always had a heart sincerely loyal and affectionate to the King and the government, the best government in the world. I pray as sincerely for the King's happy and long life as any man alive; and for me to go about to raise a rebellion, which I looked upon as so wicked and unpracticable, is unlikely. Besides, if I had been inclined to it, by all the observation I made in the country, there was no tendency to it. What some hot-headed people have done there, is another thing. A rebellion can't be made now as it has been in former times; we have few great men. I was always for the government, I never desired any thing to be redressed but in a Parliamentary and legal way. I have been always against innovations, and all irregularities whatsoever, and shall be as long as I live, whether it be sooner or later. Gentlemen, I am now in your hands eternally, my honour, my life, and all; and I hope the heats and animosities that are amongst you will not so byass you, as to

make you in the least inclined to find an innocent man guilty. I call to witness heaven and earth, I never had a design against the King's life in my life, nor never shall have. I think there is nothing proved against me at all. I am in your hands, God direct you.

Sol. Gen. My Lord, and you Gentlemen of the Jury, the prisoner at the bar stands indicted for High-Treason, in conspiring the death of the King. The overt-act that is laid to prove that conspiracy and imagination by, is the assembling in council to raise arms against the King, and raise a rebellion here. We have proved that to you by three witnesses. I shall endeavour as clearly as I can to state the substance of the evidence to you, of every one of them as they have delivered it.

The first witness Colonel Rumsey comes, and he tells you of a message he was sent of to Mr. Sheppard's house to my Lord Russel, with several other persons who he was told would be there assembled together. And the message was to know what readiness they were in, what resolutions they were come to concerning the rising at Taunton. By this you do perceive that this conspiracy had made some progress, and was ripe to be put in action. My Lord Shaftsbury that had been a great contriver in it, he had pursued it so far, as to be ready to rise. This occasioned the message from my Lord Shaftsbury to my Lord Russel, and those noble persons that were met at Mr. Sheppard's house, to know what the resolution was concerning the business of Taunton, which you have heard explained by an undertaking of Mr. Trenchard's; that the answer was, they were disappointed there, and they could not then be ready, and that my Lord Shaftsbury must be content. This message was delivered in presence of my Lord Russel; the messenger had notice my Lord Russel was there; the answer was given as from them all, That at present they;

they could not be ready, because of that disappointment. Colonel Rumsey went further, and he swears there was a discourse concerning the surprizing of the guards; and the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong, went to see what posture they were in, whether it were feasible to surprize them, and they found them very remiss; and that account they brought back, as is proved to you by Mr. Sheppard, the other witness, that it was a thing very feasible. But to conclude with the substance of Colonel Rumsey's evidence, he says, my Lord was privy to it, that he had discourse among the rest of it, though my Lord was not a man of so great discourse as the rest, and did talk of a rising. He told you there was a rising determined to be on the 19th of November last, which is the substance of Colonel Rumsey's evidence.

Gentlemen, the next witness is Mr. Sheppard, and his evidence was this: He swears that about October last, Mr. Ferguson came to him of a message from the Duke of Monmouth, to let him know, that he and some other persons of quality would be there that night; that accordingly they did meet, and my Lord Russel was there likewise; that they did desire to be private, and his servants were sent away; and that he was the man that did attend them. He swears there was a discourse concerning the way and method to seize the guards; he goes so far, as to give an account of the return of the errand the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong went upon, That it was feasible, if they had strength, to do it. Then he went a little farther, and he told you there was a paper read, that in his evidence does not come up to my Lord Russel, for he did not say my Lord Russel was by, and I would willingly repeat nothing but what concerns the prisoner. This therefore Colonel Rumsey and Mr. Shep-

pard agree in, That there was a debate among them how to surprize the guards, and whether that was feasible, and Mr. Sheppard is positive as to the return made upon the view.

The next witness was my Lord Howard; he gives you an account of many things, and many things that he tells you are by hear-say. But I cannot but observe to you, that all this hear-say is confirmed by these two positive witnesses, and their oaths agree with him in it. For my Lord Shaftsbury told him of the disappointment he had met with from these noble persons that would not join with him; and then he went from my Lord Shaftsbury to the Duke of Monmouth to expostulate with him about it (for my Lord Shaftsbury then was ready to be in action) and that the Duke said he always told him he would not engage at that time. This thing is confirmed to you by these two witnesses. Col. Rumsey says, when he brought the message from my Lord Shaftsbury, the answer was, they were not ready, my Lord must be contented.

Next he goes on with a discourse concerning my Lord Shaftsbury, (that does not immediately come up to the prisoner at the bar, but it manifests there was a design at that time) he had ten thousand brisk boys (as he called them) ready to follow him upon the holding up his finger. But it was thought not so prudent to begin it, unless they could join all their forces. So you hear in this they were disappointed: And partly by another accident too, my Lord Howard had an apprehension it might be discovered, that was upon the proclamation that came out forbidding bon-fires, to prevent the ordinary tumults that used to be upon those occasions. Then my Lord Howard goes on and comes particularly to my Lord Russel, for upon this disappointment you find my Lord Shaftsbury thought fit to be gone. But after that, the design was not laid aside; for you hear,

hear, they only told him all along, they could not be ready at that time, but the design went on still to raise arms, and then they took upon themselves to consult of the methods of it; and for the carrying it on with the greater secrecy, they chose a select council of six, which were the Duke of Monmouth, my Lord of Essex, my Lord Howard, my Lord Russel, Mr. Hambden, and Colonel Sidney. That accordingly they met at Mr. Hambden's (there was their first meeting) and their consultation there was, how the insurrection should be made, whether first in London, or whether first in the country, or whether both in London and in the country at one time. They had some debates among themselves that it was fittest first to be in the country; for if the King should send his guards down to suppress them, then the city that was then as well disposed to rise, would be without a guard, and easily effect their designs here.

Their next meeting was at my Lord Russel's own house, and there their debates were still about the same matter, how to get in Scotland to their assistance, and in order to that, they did intrust Col. Sidney, one of their council, to send a messenger into Scotland for some persons to come hither, my Lord Melville, Sir Hugh Campbell, and Sir John Cockram. Accordingly Col. Sidney sends Aaron Smith (but this is only what Col. Sidney told my Lord afterwards, that he had done it, but) you see the fruit of it. Accordingly they are come to town, and Sir Hugh Campbell is taken by a messenger upon his arrival; and he had been but four days in town, and he had changed his lodging three times.

Now, gentlemen, this is the substance of the evidence that hath been produced against my Lord Russel. My Lord Russel hath made several objections, that he was accidentally at this meeting at Mr. Sheppard's house, and came about other bu-

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siness; but I must observe to you; that my Lord Russel owned that he came along with the Duke of Monmouth, and I think; he said, he went away with him too. You observe what Mr. Sheppard's evidence was: Mr. Ferguson came to tell him the Duke of Monmouth would come; and accordingly the Duke of Monmouth did come, and brought his companion along with him, which was my Lord Russel; and certainly they that met upon so secret an affair, would never have brought one that had not been concerned. Gentlemen, there are other objections my Lord hath made, and those are in point of law; but before I come to them, I would observe what he says to the second meeting. My Lord does not deny but that he did meet both at Mr. Hambden's house, and my Lord's own: I think my Lord said they did meet only to discourse of news; and my Lord Howard being a man of excellent discourse, they met for his conversation. Gentlemen, you can't believe that this designed meeting was for nothing, in this close secret meeting that they had no contrivance among them. You have heard the witness, he swears positively what the conversation was, and you see the fruit of it, Sir Hugh Campbell's coming to town, and absconding when it is discovered. Now my Lord Russel insists upon it, that admitting these facts be proved upon him, they amount to no more than to a conspiracy to levy war, and that that is not treason within the statute of 25 E. 3. and if it be only within the statute of the 13th of this King, then 'tis out of time, that directs the prosecution to be within six months: The law is plainly otherwise. The statute of the 13th of this King I will not now insist upon, though, I believe, if that be strictly looked into, the clause that says the prosecution shall be within six months, does not refer to treason, but only to the other offences that are highly punishable:

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able by that statute. For the proviso runs thus:

“13 Car. 2. Provided always, that no person be prosecuted for any of the offences in this act mentioned, (other than such as are made and declared to be High-Treason) unless it be by order of the King's Majesty, his heirs or successors, under his or their sign manual, or by order of the council-table of his Majesty, his heirs or successors, directed unto the Attorney-General for the time being, or some other council learned to his Majesty, his heirs or successors for the time being: *Nor* shall any person or persons by virtue of this present act, incur any the penalties herein before-mentioned, unless he or they be prosecuted within six months next after the offence committed, and indicted thereupon within three months after such prosecution; any thing herein contained to the contrary notwithstanding.”

This word (*Nor*) is a continuation of the former sentence, and the exception of High-Treason will go through all, and except that out of the temporary limitation of treason: But this is High-Treason within 25 E. 3. To conspire to levy war, is an overt-act to testify the design of the death of the King. And the error of my Lord Coke had possibly led my Lord into this mistake. But this, gentlemen, hath been determined; it was resolved by all the Judges in the case of my Lord Cobham, 1 Jac. A conspiracy to levy war against the King's person (as this was a conspiracy to seize the guards) what does that tend to but to seize the King? And that always hath been taken to be High-Treason. But there are some things called levying of war in law, that are not so directly against the King, as if a number of men go about to levy men to overthrow all inclosures, this by the generality of the intent, and because of the consequences, is accounted levying

war against the King. A conspiracy therefore to levy such a war, which by construction only is against the King, perhaps that may not be such an overt-act, as to testify the imagination of the death of the King; but other conspiracies to raise war against the King have always so been taken. 'Tis the resolution of all the Judges in my Lord Dyer's Reports, the case of Dr. Story: A conspiracy to invite a foreign Prince to make an invasion, though no invasion follow, is an overt-act to prove the conspiring the death of the King; and as it has been so taken, so it hath been practised but of late days. In the King's-Bench I take it, the indictment against Plunket that was hanged, he was indicted for conspiring against the Life of the King, and his charge went no further than for raising of arms, and inviting the French King in, and he suffered. This is acknowledged by my Lord Coke, for he himself said in the paragraph before that out of which this advice to my Lord Russell is extracted, that a conspiracy to invite a foreign Prince to invade the kingdom, is a conspiracy against the life of the King. And in the next paragraph, he says an overt-act of one treason cannot be an overt-act of another treason; but constant practice is against him in that: For what is more common than to indict a man for imagining the death of the King, and to assign the overt-act in a conspiracy to raise arms against the King? And sometimes they go on and say, did levy war against the King. Now by my Lord Coke's rule, levying war, unless the indictment be particular for that, is not an overt-act for the compassing the death of the King; but the contrary hath been resolved by all the Judges in the case of Sir Henry Vane, and it is the constant practice to lay it so in indictments. It would be a strange construction if this should not be High-Treason. 'Tis agreed by every body, to take the King prisoner, to seize the King,

that

that is a compassing of the death of the King; and to sit in council to conspire to effect that, that is an overt-act of the imagination of the death of the King: Now no man can distinguish this case from that; and this consultation amounted to all this, for plainly thither it tended. The consultation was to seize upon the King's guards, that could have no other stop but to seize upon the King's person, and bring him into their power. As to the killing of the King, I am apt to think that was below the honour of the prisoner at the bar; but this is equal treason: If they designed only to bring the King into their power, till he had consented to such things as should be moved in Parliament, 'tis equally treason as if they had agreed directly to assassinate him. Therefore I think there is nothing for you to consider, but to see that the fact be fully proved; and I see nothing that hath been said by my Lord Russel that does invalidate our evidence. He hath produced several witnesses, persons of honour; my Lord Anglesey he tells you of a discourse my Lord Howard had with my Lord of Bedford; that he told my Lord of Bedford that he needed not to fear, for he had a wife and understanding son, and could not think he should be guilty of any such thing as was laid to his charge. This is brought to invalidate my Lord Howard's testimony. Gentlemen, do but observe, my Lord Howard was as deep in as any of them, and was not then discovered: Is it likely that my Lord Howard, that lay hid, should discover to my Lord of Bedford, that there was a conspiracy to raise arms, and that he was in it? This would have been an aspersion upon my Lord of Bedford, that any such thing should have been said.

Mr. Edward Howard is the next, and he proves, that my Lord Howard used solemn protestations that he knew nothing of this conspiracy. I did observe, that

worthy gentleman in the beginning of his discourse (for it was pretty long) said first that he had been several times tempting my Lord Howard to come over, and be serviceable to the King, and if he knew any thing, that he would come and confess it: Why, gentlemen, Mr. Howard that had come to him upon these errands formerly, and had thought he had gained him, I conceive you do not wonder if my Lord Howard did not reveal himself to him, who presently would have discovered it, for, for that errand he came. But if my Lord had had a design to have come in and saved his life, he would have made his submission voluntarily, and made his discovery. But my Lord tells nothing till he is pinched in his conscience, and confounded with the guilt (being then in custody) and then he tells the whole truth, that which you have heard this day.

Gentlemen, this hath been all that hath been objected against the witnesses, except what is said by Dr. Burnet; and, he says, that my Lord Howard declared to him, that he believed there was no plot, and laughed at it. Why, gentlemen, the Doctor would take it ill to be thought a person fit to be entrusted with the discovery of this; therefore what he said to him signifies nothing, for it is no more than this, that he did not discover it to the Doctor.

But the last objection (which I see there has been a great many persons of honour and quality called to) is, that it is not likely my Lord Russel should be guilty of any thing of this kind, being a man of that honour, virtue, and so little blameable in his whole conversation. I do confess, gentlemen, this is a thing that hath weight in it. But consider on the other hand, my Lord Russel, is but a man, and hath his human frailties about him. Men fall by several temptations; some out of revenge, some by malice fall into such offences as these are: my Lord Russel is not of that temper,
and

and therefore may be these are not the ingredients here. But, gentlemen, there is another great and dangerous temptation that attends people in his circumstances, whether it be pride or ambition, or the cruel snare of popularity, being cried up as a patron of liberty. This hath been a dangerous temptation to many, and many persons of virtue have fallen into it, and 'tis the only way to tempt persons of virtue; and the Devil knew it, for he that tempted the Pattern of Virtue, shewed him all the kingdoms of the world, and said, "All these will I give thee, if thou wilt fall down and worship me." Though he be a person of virtue, yet it does not follow but his virtue may have some weak part in him. And I am afraid, these temptations have prevailed upon my Lord. For I cannot give myself any colour of objection, to disbelieve all these witnesses who give in their testimony. I see no contradiction, no correspondence, no contrivance at all between them. You have plain oaths before you, and I hope you will consider the weight of them, and the great consequence that did attend this case, the overthrow of the best government in the world, and the best and most unspotted religion, which must needs have suffered; the greatest liberty and the greatest security for property that ever was in any nation, bounded every way by the rules of law, and those kept sacred. I hope you will consider the weight of this evidence, and consider the consequences such a conspiracy, if it had taken effect, might have had. And so I leave it to your consideration upon the evidence you have heard.

Serj. *Jefferies*. My Lord, and you Gentlemen of the Jury, this cause hath detained your Lordship a long time, by reason of so many witnesses being called, and the length of the defence made by the prisoner at the bar; and if it had not been for the length I would not have injured your patience, by

saying any thing, Mr. Solicitor having taken so much pains in it. It is a duty incumbent upon me, under the circumstances I now stand, to see if any thing hath been omitted that hath not been observed to you; and I shall detain you with very few words.

Gentlemen, you must give me leave to tell you, 'tis a case of great consequence, of great consequence to that noble person that now is at the bar, as well as to the King; for it is not desired by the King nor by his counsel, to have you influenced in this matter by any thing but by the truth, and what evidence you have received. You are not to be moved by compassion or pity, the oath you have taken is to go according to your evidence; and you are not to be moved by any insinuations that are offered by us for the King, nor by any insinuations by the prisoner at the bar; but the truth, according to the testimony given, must be your guide. How far the law will affect this question, that we are not to apply to you, for that we are to apply ourselves to the court (they are the Judges in point of law) who will take so much care in their directions to you, that you may be very well satisfied you will not easily be led into error. For the instances that have been put, I could put several others; but I will take notice only of one thing that that noble person at the bar seems to object. Gentlemen, it is not necessary there should be two witnesses to the self-same fact at the self-same time; but if there be two witnesses tending to the self-same fact, though it were at several times, and upon several occasions, they will be in point of law two witnesses, which are necessary to convict a man for High-Treason. Gentlemen, I make no doubt this thing is known to you all, not only by the judgment of all the Judges in England, but the judgment of the Lords in Parliament, when I doubt

doubt not the prisoner at the bar did attend in the case of my Lord Stafford, wherein one witness gave an account of a conspiracy in England, Tuberville of another in France; and by the opinion of all my Lords the Judges approved in Parliament, that was enough, and he was convicted.

The question is, whether we have sufficiently proved this matter. Gentlemen, I must tell you, we rake no goals, nor bring any profligate persons, persons that wanted faith or credit before this time. I must tell you, that notwithstanding the fair notice that hath been given to the prisoner at the bar (that you see he hath taken an advantage of it, he hath given an account of a private conversation with my Lord Howard before that noble person that was witness against him was taken) he has not given you in all his proof hitherto, nay I say, he has not pretended any thing in the world: Wherefore you, gentlemen, that are upon your oaths, should take it upon your consciences, that two men, against whom there is no objection, should come to damn their own souls to take away the life of this gentleman, when there is no quarrel, no temptation wherefore these gentlemen should come in the face of a court of justice, in the face of such an auditory, without respect to that infinite Being to whom they appeal for confirmation of the truth of their testimony: And if they had the faith of men or Christians, they must necessarily conclude, that if they did swear to take away a man's life that was innocent, God would sink them down presently into hell.

Gentlemen, In the next place I must acquaint you, that the first witness, Colonel Rumsey, it is apparent he was taken notice of by the prisoner as a man fit to be trusted; he was engaged by my Lord Shaftsbury: But, says he, would any man believe that that man that had received so many marks of the King's favour, both in advantage to his estate, his honour, and person, could be

ever contriving such an hellish design as this? Gentlemen, if you will argue from such uncertain conjectures, then all criminals will come off. Who should think that my Lord of Essex, who had been advanced so much in his estate and honour, should be guilty of such desperate things! which had he not been conscious of, he would scarcely have brought himself to that untimely end, to avoid the methods of public justice. Colonel Rumsey tells you, my Lord Shaftsbury was concerned in this conspiracy. I am sorry to find that there have been so many of the nobility of this land that have lived so happily under the benign influence of a gracious Prince, should make so ill returns. Gentlemen, I must appeal to you, whether in your observation you found Colonel Rumsey to be over-hasty, and an over-zealous witness; he did not come as if he came in spite to the prisoner at the bar; you found how we were forced to pump out every thing; but after he had been pressed over and over again, then he came to it: so that I observe to you, that he was an unwilling witness.

Gentlemen, give me leave to observe to you, the prisoner at the bar, before such time as Mr. Sheppard came up and gave evidence against him, says he, I came only by accident, only to taste a parcel of wine. Mr. Sheppard, when he comes up, he tells you there was no such design. Ferguson, that was the person he kept company with, the reverend dean, and the rest of the clergy of the church of England, they were not fit to be trusted with it, but this independant person Ferguson, he gives notice of the coming of these persons; and in pursuance of this notice they all come, they come late, in the evening, not in the posture and quality they use to go, for you find they had not so much as a coach. Is it probable they came to taste wine? wherefore did they go up into a room? Wherefore did they order Mr. Sheppard that none

of the boys should come up, but that the master must fetch the wine and sugar himself? Wherefore you may perceive the action they were upon, there were only to be such persons as had an affection for such a cause. You find pursuant to what Col. Rumsey says, that there was a direction to take a view of the guards, that Sir Tho. Armstrong comes back and makes this report: Says he, I have taken notice they are in such an idle careless posture, that it is not impossible to surprize them. This Mr. Sheppard he does not come, nor does he appear to you to come here out of any vindictive humour, to do the prisoner at the bar any hurt.

In the next place we have my Lord Howard, he comes and positively tells you, after he had given an account (for you observe there were two parts to be acted in this horrid tragedy; there was first the scoundrel sort of people were to be concerned to take away the life of the King and the Duke, the great persons were to head the party in the rising) they put themselves in proper postures, each of them consenting to something of the surprize, inasmuch as you observe that Sir Thomas Armstrong and some other persons might not be trusted. They come and resolve themselves out of a general council, and they meet in a particular council of six, looking upon themselves as the heads of the party: And I must tell you many of them (we live not in an age of such obscurity, but we know them) how fond have they been of the applause of the people! As that person encouraged himself yesterday, they were *liberatores patriæ*, that could murder the King and the Duke.

My Lord, I must take notice that this noble Lord is known to have an intimacy with him; you observe with how much tenderness he is pleased to deliver himself, how carefully he reports the debates of the particular consults of the persons to be en-

trusted in the management; he tells you, that noble Lord the prisoner at the bar was pitched upon, and Algernone Sidney, a man famous about the town: For what? To call in parties from some of his Majesty's other dominions, persons we know ripe enough for rebellion, to assist. Pursuant to this, you find persons sent of a message for some to come over, whereof some are in hold: So that for all dark and obscure sort of matters, nothing can be brought better to light than this, of taking all matters together; with the concurring circumstances of time and place.

Gentlemen, I must confess this noble Lord hath given an account by several honourable persons of his conversation, which is a very easy matter. Do you think if any man had a design to raise a rebellion against the crown, that he would talk of it to the reverend divines, and the noble Lords that are known to be of integrity to the crown? Do you think the gentleman at the bar would have so little concern for his own life, to make this discourse his ordinary conversation? No, it must be a particular consult of six, that must be entrusted with this. I tell you, it is not the divines of the church of England, but an independant divine, that is to be concerned in this; they must be persons of their own complexion and humour. For men will apply themselves to proper instruments.

Gentlemen, I would not labour in this case; for far be it from any man to endeavour to take away the life of the innocent. And whereas that noble Lord says, he hath a virtuous good lady, he hath many children, he hath virtue and honour he puts into the scale: Gentlemen, I must tell you on the other side, you have consciences, religion: You have a prince, and a merciful one too; consider the life of your prince, the life of his posterity, the consequences that would have attended if this villainy had taken effect. What would have

have become of your lives and religion? What would have become of that religion we have been so fond of preserving? Gentlemen, I must put these things home upon your consciences. I know you will remember the horrid murder of that most pious prince the martyr, King Charles the First. How far the practices of those persons have influenced the several punishments since, is too great a secret for me to examine. But now I say, you have the life of a merciful King, you have a religion that every honest man ought to stand by, and I am sure every loyal man will venture his life and fortune for. You have your wives and children. Let not the greatness of any man corrupt you, but discharge your consciences both to God and the King, and to your posterity.

L. C. J. Gentlemen of the jury, the prisoner at the bar stands indicted before you of high-treason, in compassing and designing the death of the King, and in declaring of it by overt acts, endeavouring to raise insurrections and popular commotions in the kingdom here. To this he hath pleaded not guilty. You have heard the evidence that hath been against him, it hath been at large repeated by the King's counsel, which will take off a great deal of my trouble in repeating it to you again. I know you cannot but take notice of it, and remember it, it having been stated twice by two of the King's counsel to you; it is long, and you see what the parties here have proved. There is first of all Colonel Rumley, he does attest a meeting at Mr. Sheppard's house, and you hear to what purpose he says it was; the message that he brought, and the return he had; it was to enquire concerning a rising at Taunton; and that he had in return to my Lord Shaftsbury was, that Mr. Trenchard had failed them, and my Lord must be contented, for it could not be that time. You hear that he does say that they did design a

rising; he saith there was a rising designed in November, I think he saith the 17th, upon the day of Queen Elizabeth's birth. You hear he does say, there was at that meeting some discourse concerning inspecting the King's guards, and seeing how they kept themselves, and whether they might be surprized; and this he says, was all in order to a rising. He says that at this my Lord Russel was present. Mr. Sheppard does say, that my Lord Russel was there: That he came into this meeting with the Duke of Monmouth, and he did go away with the Duke of Monmouth, as he believes. He says there was some discourse of a rising or insurrection that was to be procured within the kingdom, but he does not tell you the particulars of any thing, he himself does not. My Lord Howard afterwards does come and tell you of a great discourse he had with my Lord Shaftsbury in order to a rising in the city of London, and my Lord Shaftsbury did value himself mightily upon ten thousand men he hoped to raise; and a great deal of discourse he had with my Lord Shaftsbury. This he does by way of inducement to what he says concerning my Lord Russel. The evidence against him is some consults that there were by six of them, who took upon them as he says, to be a council for the management of the insurrection that was to be procured in this kingdom. He instances in two that were for this purpose; the one of them at Mr. Hambden's house, the other at my Lord Russel's house. And he tells you at these meetings there was some discourse of providing treasure, and of providing arms, but they came to no result in these things. He tells you, that there was a design to send for some of the kingdom of Scotland that might join with them in this thing. And this is upon the matter the substance of the evidence that hath been at large declared to you by the King's counsel, and what you have heard. Now gentlemen,

gentlemen, I must tell you, somethings it lies upon us to direct you in.

My Lord excepts to these witnesses, because they are concerned by their own shewing in this design: If there were any any, I did direct (some of you might hear me) yesterday, that that was no sufficient exception against a man's being an evidence in the case of treason; that he himself was concerned in it; they are the most proper persons to be evidence, none being able to detect such councils but them. You have heard my Lord Russel's witnesses that he hath brought concerning them, and concerning his own integrity and course of life, how it hath been sober and civil, with a great respect to religion, as these gentlemen do all testify. Now the question before you will be, Whether upon this whole matter, you do believe my Lord Russel had any design upon the King's life, to destroy the the King, or take away his life, for that is the material part here. It is used and given you (by the King's counsel) as an evidence of this, that he did conspire to raise an insurrection, and to cause a rising of the people, to make as it were a rebellion within the nation, and to surprize the King's guards, which, say they, can have no other end but

to seize and destroy the King; and it is a great evidence (if my Lord Russel did design to seize the King's guards, and make an insurrection in the kingdom) of a design for to surprize the King's person. It must be left to you upon the whole matter: You have not evidence in this case as there was in the other matter that was tried in the morning, or yesterday, against the conspirators to kill the King at the Rye. There was a direct evidence of a consult to kill the King, that is not given you in this case: This is an act of contriving rebellion and an insurrection within the kingdom, and to seize his guards, which is urged as an evidence, and surely is in itself an evidence, to seize and destroy the King.

Upon this whole matter this is left to you. If you believe the prisoner at the bar to have conspired the death of the King, and in order to that to have had these consults that these witnesses speak of, then you must find him guilty of this treason that is laid to his charge.

Then the court adjourned till four o'clock in the afternoon, when the jury brought the said Lord Russel in guilty of the said high-treason.

The Arraignment of ALGERNONE SIDNEY, Esquire, November the 7th, 1683.

ALGERNONE Sidney, Esq. was by *Habeas Corpus* brought up to the bar of the court of King's-bench, and the Clerk of the Crown having read the return, Mr. Attorney General informed the court there

was an indictment against the prisoner, and prayed he might be charged with it.

Cl. of Cr. Algernone Sidney, hold up thy hand.

[which he did.
Midd.

Midd. ff. "The jurors for our Lord the King, upon their oaths do present, that Algernone Sidney, late of the parish of St. Martin in the Fields, in the county of Middlesex, Esquire, as a false traitor against the most illustrious, most excellent Prince, our Lord Charles II. by the grace of God, King of England, Scotland, France, and Ireland, and his natural Lord, not having the fear of God in his heart, nor weighing the duty of his allegiance, but moved and seduced by the instigation of the devil, utterly withdrawing the cordial love, and true, due, and natural obedience, which a true and faithful subject of our said Lord the King should bear, towards him the said Lord the King, and of right is bound to bear; contriving, and with all his strength intending, to disturb the peace and common tranquillity of this kingdom of England, and to stir up and move war and rebellion against the said Lord the King, in this kingdom of England, and to depose and deprive the said Lord the King, from the title, honour, and regal name, of the Imperial Crown of his kingdom of England, and to bring and put the said Lord the King to death, and final destruction, the thirtieth day of June, in the five and thirtieth year of the reign of our Lord King Charles II. now King of England, &c. and divers other days and times, as well before, as after, at the parish of St. Giles in the Fields, in the county of Middlesex, maliciously and traitorously, with divers other traitors to the jurors aforesaid unknown, did conspire, compass, imagine and intend to deprive and cast down, the said Lord the King, his supreme natural Lord, not only from the regal state, title, power and rule of his kingdom of England; but also to kill and bring and put to death the same Lord the King, and to change, alter and utterly subvert the ancient government of this his kingdom of England, and to cause and procure a mi-

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serable slaughter among the subjects of the said Lord the King through his whole kingdom of England, and to move and stir up an insurrection and rebellion against the said Lord the King, within this kingdom of England, And to fulfil and perfect these his most horrid, wicked and diabolical treasons, and traitorous compassings, imaginations and purposes, the same Algernone Sidney as a false traitor, then and there, and divers other days and times, as well before as after, maliciously, traitorously and advisedly, did assemble himself, meet and consult, with the aforesaid other traitors to the jurors aforesaid unknown, and with the same traitors did treat of, and for those his treasons and traitorous compassings, imaginations and purposes, to be executed and fulfilled. And that the aforesaid Algernone Sidney as a false traitor, maliciously, traitorously and advisedly, then and there, and divers other days and times, as well before as after, upon himself did assume, and to the aforesaid other traitors did promise that he would be aiding and assisting in the execution of their treasons and traitorous compassings, imaginations and purposes aforesaid, and to fulfil, perfect and reduce to effect those their most horrid treasons and traitorous compassings, imaginations and purposes aforesaid, the same Algernone Sidney as a false traitor, then and there, falsely, maliciously, advisedly and traitorously did send one Aaron Smith into Scotland, to invite, procure, and incite divers evil disposed subjects of our said Lord the King, of his kingdom of Scotland, to come into this kingdom of England, to advise and consult with the aforesaid Algernone Sidney, and the aforesaid other unknown traitors in this kingdom of England, of aid and assistance to be expected and supplied from the kingdom of Scotland to fulfil, perfect, and reduce to effect those their most wicked, horrid and traitorous treasons aforesaid. And that the aforesaid Algernone Sidney,

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to

to fulfil and perfect those most wicked, horrid and devilish treasons, and traiterous compassings, imaginations and purposes aforesaid, and to persuade the subjects of the said Lord the King of this kingdom of England, That it is lawful to make and stir up an insurrection and rebellion against the said Lord the King that now is, the said thirrieth day of June, in the five and thirtieth year of the reign of the said Lord the King that now is, at the parish of St. Giles in the Fields, in the county of Middlesex, falsely, unlawfully, wickedly, seditiously and traiterously did make, compose and write, and caused to be made, composed, and written, a certain false, seditious and traiterous libel, in which said false, seditious and traiterous libel among other things is contained as followeth in these English words, viz. "The power originally in the people of England is delegated unto the Parliament, he (the most Serene Lord, Charles II. now King of England, meaning) is subject unto the law of God, as he is a man to the people, that makes him a King, inasmuch as he is a King, the law sets a measure unto that subjection, and the Parliament judges of the particular cases thereupon arising, he must be content to submit his interest unto theirs, since he is no more than any one of them in any other respect than that he is by the consent of all, raised above any other: If he doth not like this condition, he may renounce the crown; but if he receive it upon that condition (as all magistrates do the power they receive) and swear to perform it, He must expect that the performance will be exacted, or revenge taken by those that he hath betrayed." And that in another place in the said false, seditious and traiterous libel, among other things, these false, seditious, and traiterous English sentences are contained (that is to say) "We may therefore change or take away Kings, without breaking any yoke or that is made, a yoke which ought not to be one, the injury is therefore in making or imposing,

and there can be none in breaking it," against the duty of his allegiance, against the peace of the said now Lord the King, his crown and dignity, &c. And against the form of the statutes in this case made and provided, &c."

How sayest thou, art thou guilty of this high treason whereof thou standest indicted, or not guilty?

Col. *Sidney*. My Lord, I find here an heap of crimes put together, distinct in nature one from another, and distinguished by law; and I do conceive, my Lord, That the indictment itself is thereupon void, and I cannot be impeached upon it.

L. C. J. [*Sir George Jefferies*.] We are not to admit of any discourses, till you answer the question, whether you be guilty or not guilty.

Att. Gen. [*Sir Robert Sawyer*.] If he will demur, my Lord, we will give him leave.

Sidney. I presume your Lordship will direct me, for I am an ignorant man in matters of this kind, I may easily be surprized in it, I never was at a trial in my life of any body, and never read a law-book.

L. C. J. Because no prisoner under your circumstance is to have counsel, but in special cases to be assigned in matters of law, the court is bound by their oaths and duty of their places, that they shall not see any wrong done to you: But the business we are to tell you now is, you are to plead guilty, or not guilty, or demur, which is a confession in point of law.

Sidney. Under favour, my Lord, there may be indictments that are erroneous, and if they are erroneous and vitious, they are null, and ought not to be answered to.

Just. *Withins*. If you please to demur to it, you shall have liberty to make any exceptions.

Sidney. I do not demur, it is only exceptions. I think in matters of life, a man may give in his exceptions to the bill, and plead not guilty afterwards. I am sure in
Sir

Sir Henry Vane's case, the court said it, and offered him to do it; that which, under favour, I hope to do.

L. C. J. You must plead or demur.

Sidney. My Lord; if I put in exceptions to the bill, I do not plead till those exceptions are over-ruled. This was in the case of Sir Henry Vane.

L. C. J. Sir, I must tell you, you must either plead or demur.

Sidney. My Lord, there are in this indictment, some treasons or reputed treasons, that may come within the statute of the 13th of this King, which is limited by time, the prosecution must be in six months, and the indictment within three. Now, my Lord, if that this business that is mentioned, be above six months before my commitment, or above three before the indictment, I think, under favour, I ought not to answer to these matters.

L. C. J. You are mistaken in the law. That will be saved when the fact comes to appear. If they alledge the thing to be at a time, which, according to that allegation, would maintain the indictment, if upon the trial it appear otherwise, the court is bound to take notice of it when you come to your trial, but we are not bound to examine that before you have pleaded.

Sidney. My Lord, every body will acknowledge, that there have been, or may be, vitious indictments. Now if I plead to an erroneous indictment, and am acquitted, I may be indicted again. Bills of attainder have been upon errors in original indictments, as that of the Duke of Somerset. Now if there be here several things distinct in nature, distinguished by law that are put together, it is impossible to make a positive answer to any one. If any one should tell me, that I by myself, or by others, by sword or by pistol, conspired to kill the King, I can say, I did it, or, I did it not. If any one say, I have levied war, and by several acts undertake to prove I

have done it, I can say I have done it, or I have not. But here I do not find any thing specified, or can tell upon what statute I am indicted. I pray I may see the record.

L. C. J. That we cannot do. You shall hear it read again if you will, if you think it to be a void indictment, demur to it if you will.

Sidney. My Lord, I desire you to accept of this. (Shewing a parchment.)

L. C. J. What is it? Put in what plea you shall be advised; but if you put in a special plea, and Mr. Attorney demurs, you may have judgment of death, and by that you waive the fact.

Sidney. I cannot make any objection to the bill after I have pleaded, not guilty, for I accept the bill thereby to be good.

L. C. J. If you can assign any matter of law, do. But otherwise what a kind of thing would it be? All criminals would say in all cases, I doubt whether the bill be good or bad. And after I have thus considered of it, I will plead. You are misinformed, and this the court tells you, as a duty incumbent on them.

Just. Withins. If you demur, and shew what your causes are, we will assign you counsel.

Sidney. I desire you would not try me, and make me run on dark and slippery places, I do not see my way.

L. C. J. Do not apprehend yourself to be so, as if the court would run you on any inconvenience. But they are bound to see the methods of justice preserved, they are those that you, and all the King's subjects are bound to conform to. If any one of us were in the same condition, we must observe the same methods of law.

Cl. of Ct. Art thou guilty, or not guilty?

Sidney. Then pray, my Lord, will you tell me this, is it true, that a man, how vitious soever an indictment is, must answer or demur to it?

L. C. J.

L. C. J. He must either answer or demur.

Sidney. Are there no exceptions to be admitted?

L. C. J. None: And if you do not do the one, or the other, judgment passes, as if you had pleaded.

Sidney. This is a plea.

Just. Wilkins. Will you stand by it? Consider yourself, and your life, if you put in that plea, and Mr. Attorney demurs, if your plea be not good, your life is gone.

Sidney. Pray, my Lord, give me a day to consider of it.

L. C. J. No, we must not introduce new methods or forms for any body. The same case that is with you, may be with other people.

Sidney. My Lord, I do not pretend to any thing but what is law, and due to every man upon English ground. I would be very sorry to do that which may be hurtful.

L. C. J. You have the rule of the court. You must do one or the other. Call him to it.

Sidney. I desire this may be read. (Shewing the same parchment.)

L. C. J. It shall not be read, unless you put it in as a plea.

Att. Gen. I must do my duty, Mr. Williams exceeds his liberty, he informs the prisoner several things.

Mr. Williams. I only said, if it was a plea, put it in, Mr. Attorney can hear all I say. (Whereon Mr. Williams was reproved by the Lord Chief Justice).

Sidney. I only give it as exceptions to the bill.

Cl. of Cr. Art thou guilty or not guilty?

Sidney. If any one should ask me any particular thing, I could tell how to answer.

L. C. J. He asks you a particular thing. It is the duty of the court to pronounce judgment, if you do not plead.

Sidney. Why then, if you drive me upon it, I must plead.

L. C. J. I am sure there is no gentlemen of the long robe would put any such thing into your head. There was never any such thing done in capital matters.

Sidney. My Lord, I am there indicted for conspiring the death of the King; I have not conspired the death of the King; I am there indicted for levying of war, I have not done that. I am indicted for having invited in others, of another nation, I have not done that neither. I am there indicted to have written a seditious libel to stir up the spirits of the people against the King, I have not written any thing to stir up the people against the King.—

L. C. J. We are not to hear all this, you must plead as other people, or else in plain English we will pronounce sentence. We ought to give all men satisfaction that will be satisfied; but if they wont be directed, we can't help that.

Sidney. My Lord, If you put me upon this inevitable necessity, it lies upon you; I must plead then.

Cl. of Cr. Art thou guilty or not guilty?

Sidney. Not guilty.

Cl. of Cr. Culprit, how wilt thou be tried?

Sidney. By God and my country.

Cl. of Cr. God send thee a good deliverance.

L. C. J. If you be not guilty, I pray God you may escape.

Att. Gen. My Lord, will you please to appoint a day for his trial, that he may take notice of it now?

L. C. J. What time would you have?

Att. Gen. A week's time, do you think that will be enough?

Sidney. No, pray, my Lord, give me a fortnight's time.

Att. Gen. I will not oppose it.

Sidney. In the next place I desire a copy of the indictment.

L. C. J.

L. C. J. We cannot grant it by law.

Sidney. I desire you would please to give me counsel.

L. C. J. We cannot do it, if you assign us any particular point of law, if the court think it such a point as may be worth the debating, you shall have counsel. But if you ask for counsel for no other reason than because you ask it, we must not grant it. The court is bound to see that nothing be done against you, but what is according to the rules of law. I would be very loth to draw the guilt of any man's blood upon me.

Sidney. Has not every body counsel?

L. C. J. No.

Sidney. I have several points of law.

L. C. J. Tell us them.

Sidney. My Lord, Will you oblige me that am an ignorant man, and confess myself so, upon hearing my indictment for things I know not of, a long thing, presently to raise a point of law.

L. C. J. It is not we oblige you, Mr. Sidney, it is the law obliges you. We are the ministers of the law, it is the law says we are not to allow you counsel without making your objections, that the court may understand whether it be fit; it is the law says we may not allow you a copy of the indictment. Therefore do not go away and say that we as men sitting here impose upon you, we sit here only to administer the justice of the nation.

Just. Wilkins. Sir, you will have a fortnight's time to consider of objections in law.

L. C. J. If you will have it read, you shall. Those things that you may have by law, God forbid but you should have the benefit of them.

Sidney. I desire, my Lord, to hear it read again.

Att. Gen. Would you have it read in Latin.

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Sidney. Yes, if you please, I do understand a little Latin.

Then the indictment was read in Latin.

Sidney. What is that statute?

L. C. J. When you come to your trial, Mr. Attorney will tell you what statute he goes upon. And he may give in evidence, any act of Parliament that comprehends treason.

Sidney. Methinks he should say what statute he goes upon.

Just. Wilkins. Sir, would you have a new indictment for you?

L. C. J. He must take notice of his trial this day fortnight. Lieutenant of the Tower, you may take the prisoner back again.

Then the Lieutenant of the Tower took away his prisoner.

The Trial of ALGERNONE SIDNEY, Esq. November the 2^d, 1683.

Algernone Sidney, Esq. was brought to the bar of the court of King's-bench by *Habeus Corpus*, and the proclamation for information being made, he desired pen, ink and paper, which were granted him. And he also desired, that two persons, viz. Mr. Wynn and Mr. Gibbs, might write for him, which was also allowed by the court.

Sidney. My Lord, when I was last here, before your Lordship, I did desire a copy of my indictment, and I thought the law did allow it me. But being in an hurry, was carried first to a tavern, then led through soldiers, and surprized absolutely. I could not give that reason why I thought the law allowed me a copy. My Lord, I

was denied a copy, and thereby I was deprived of the benefit of a special plea I designed to have put in. This would have been a great help to your Lordship, and to me; the denial of which hath been a great prejudice. Now, my Lord, that which I thought was law then, I think I can give a better testimony that it is so now upon the statute of 46 E. 3. wherein it is expressed, that *tout parties & tout gents*, that is, all people shall have a copy of every record; and it enumerates several matters, as well that against the King as other people. This is a general law still in force: My Lord Stafford had a copy, and my Lord Stafford, and the Lords in the Tower had copies of their indictments. And, under favour, I think it was never more necessary than to me, there never having been, perhaps, a charge so long and so confused. Now, my Lord, I have a copy transcribed of this statute.

(Shewing a paper.

L. C. J. [*Sir George Jefferies.*] We remember the law very well. Mr. Sidney did move for a copy of the indictment, and the court denied him then, and so shall now. And yet all this while we shall deny you nothing that is law. You shall have the right that becomes a subject in your condition. And we must tell you, that notwithstanding all that case we ought not to have given you so much favour (perhaps in strictness) as we did. And because you did particularly take notice of the case of Sir Henry Vane last time, I will shew you the court did indulge more to you than was done to that person. In Sir Henry Vane's case, by the opinion of all the judges, it was declared, that no copy ought to be given, neither of the whole, nor any part of the indictment, except they shew matter of law. But your counsel, since you went away, moved for the copy of the indictment; and to satisfy them, I directed the case that you took notice of to be read in the court. And

I thought they had been sufficiently satisfied. You had the indictment read to you in Latin, which was denied in the case of Sir Henry Vane. And there is a later case known to most persons here. By the opinion of all the Judges of England, a copy of the indictment was denied to my Lord Russel. Therefore arraign him upon the indictment; we must not spend our time in discourses to captivate the people.

Sidney. Is not this a good law, my Lord? [Holding out the paper.

L. C. J. You have the rule of the court.

Just. Wilbins. Any thing the law will allow you you shall have; but I am sure if you did advise with your counsel, they must tell you the same thing.

So the Clerk of the Crown called the jury, and after several challenges, the names of the jury were as follow,

J U R Y.

John Amger	Josias Clerk
Richard White	George Glisby
William Linn	Nicholas Baxter
Lawrence Wood	William Reeves
Adam Andrews	William Grove, and
Emery Arguife	John Burt.

L. C. J. Look you, Gentlemen of the Jury, there are some gentlemen at the bar, as we are informed, are apt to whisper to the jury; 'tis no part of their duty; nay, 'tis against their duty: And therefore, gentlemen, if you hear any of them by you that offer to whisper, or make comments in this cause, as you are upon your oaths, and I doubt not but will do your duty between the King and the prisoner; so I expect if you hear the counsel say any thing, you will inform the court. Let us have no remarks, but a fair trial in God's name.

Cl. of Cr. You that are sworn look upon the prisoner, and hearken to his cause.

He

He stands indicted by the name of Algernone Sidney, of, &c. (as in the indictment) your charge is to inquire, &c.

Then proclamation for evidence was made.

Mr. *Dolben*. May it please your Lordship, and you gentlemen that are sworn. This is an indictment of High Treason, preferred against Algernone Sidney, the prisoner at the bar. The indictment sets forth, that he, as a false traitor against our most illustrious Prince, Charles the Second, his natural Lord, not having the fear of God in his heart, &c. on the thirtieth of June, in the thirty-fifth year of the King, and divers other days and times, as well before as after, in the parish of St. Giles in the Fields, in the county of Middlesex, traitorously, with divers traitors unknown, did conspire the death of the King, and to levy war within this kingdom. And to complete these traitorous purposes, did then, and there maliciously, advisedly and traitorously, send one Aaron Smith into Scotland, to excite some ill disposed persons of that kingdom to come into this, and to consult with the said Algernone Sidney, and other traitors, of and upon assistance from the kingdom of Scotland, to carry on those designs. And the indictment sets forth further, that to persuade the people of England it was lawful to raise rebellion, the said Algernone Sidney did cause to be written a false seditious libel, in which are contained these English words, "The power originally in the people of England is delegated unto the Parliament. The King is subject to the law of God, as he is a man to the people that makes him a King. In as much as he is a King, the law sets a measure unto that subjection, &c." (as in the indictment.); This is laid to be against the duty of his allegiance, against the peace of the King, his crown and dignity, and against the form of the statute in that case made and provided. If we

prove him guilty, we doubt not but you will find it.

Mr. *Att. Gen.* [*Sir Robert Sawyer.*] My Lord, and you Gentlemen of the Jury, the prisoner at the bar stands indicted of the highest crimes, the conspiring the death of the King, and the overthrow of the English monarchy. Gentlemen, we shall use this method in our evidence. We shall shew by many witnesses, that there was a design of raising and making a rebellion within this kingdom. For, gentlemen, you must take notice, and I think there is no Englishman but does believe, that for several years last past a design was laid, and for that purpose several secret insinuations were made use of, and public libels spread abroad to persuade the people, that the King was introducing arbitrary power, that he subverted all their rights, liberties, properties, and whatever was dear to them. They endeavoured to make the world believe the King was a Papist. And when, gentlemen, by such stratagems they had worked upon many incautious persons, when they thought they had gotten a sufficient party, then there was a design of an open rising (for they thought all things were ripened) and that was to be in several parts of the kingdom. Some persons to effect this design, were for a present assassination of the King. Others would do it in a more fair and gentle way. They thought it below persons of that great quality as the prisoner is, and therefore were for doing it by open force.

When we have given that general evidence, we shall then come to shew you what share and part the prisoner had in this design. For certainly he was looked upon as a very eminent person, whose education abroad, and former practices at home had rendered him fit to advise and proceed in such affairs. We shall prove when these matters were ripe, this gentleman was of the council of state, of the six that were to manage

manage this matter of the rising. We shall shew the several consultations they held: One at Mr. Hambden's house, another at the house of my Lord Ruffel. There we shall acquaint you what debates they had; for they acted like very subtle men; and there they debated, whether the rising should be first in the country, or city, or both together. They came to a resolution it should be in both places at once. Then when they had asserted that point, they come to consider the time of rising; and upon that they thought fit to call in aid of Scotland first; and that was this gentleman's particular province. For he being a man of great secrecy, was to send an emissary into that kingdom, and invite some persons over to treat with them about it. We shall prove that an emissary was sent, and this gentleman gave him a considerable sum to bear his charges. We shall prove that several Scotch gentlemen, in pursuance of this resolve, came here to treat with this great council of state, about this affair: and shall make it appear to you, that as soon as ever the least discovery of this plot was, these persons concealed themselves and withdrew, as the rest of the plotters that have fled from justice.

Gentlemen, this was not enough for this gentleman to consult on these several passages, but to demonstrate to the world, that his head and heart were intire in this service, and that he might carry it on the more effectually, he was at this very time, when this emissary was gone into Scotland, preparing a most seditious and traitorous libel, we instance in some particular words of it. But we shall shew you, that the whole design of this treatise is to persuade the people of England, that it is lawful, nay, that they have a right to set aside their Prince, in case it appear to them, that he hath broken the trust laid upon him by the people. Gentlemen, he does use in that treatise several arguments drawn from

the most rebellious times that ever were in England, from the late rebellion (I must needs use that word notwithstanding the Act of Oblivion, when a gentleman shall now attempt to do those things for which he was pardoned, then) and from other kingdoms, where rebellion hath been prosperous against Princes. Then he falls to reasoning, and uses great reason in the case, that all the power of the Prince is originally in the people, and applies that discourse, that the power of the King was derived from the people upon trust, and they had already declared the King had invaded their rights, and therefore he comes to argue, they might assume that original power they had conferred. And he tells the King, that is no hard condition; if he thinks it so, he should lay down his crown, if not, he threatens the condition would be exacted, or otherwise should be revenged by those he had betrayed; and who but this gentleman and his confederates, that thought himself not only able to govern this nation, but many monarchies, should call him to account for it? For he lays down this principle, That though all the people do rise against their Prince, it is no rebellion. The whole book is an argument for the people to rise in arms, and vindicate their wrongs. He lays it down, "That the King has no authority to dissolve the Parliament; but 'tis apparent the King hath dissolved many; therefore he hath broken his trust, and invaded our rights." And at last concludes with that passage laid in the indictment, "We may therefore shake off our yoke; for 'tis not a yoke we submitted to, but a yoke by tyranny (that must be the meaning of it) they have imposed on us."

Gentlemen, if we prove all these matters to you, I doubt not you will do right to the King and kingdom, and shew your abhorrence of those republican principles; which, if put in practice, will not only destroy

stroy the King, but the best monarchy in the world.

Sol. Gen. [*Mr. Finch.*] Pray call Mr. West. [Who appeared.

Col. Sidney. I pray one word, my Lord, before Mr. West be sworn, I have heard, my Lord, Mr. West hath confessed many treasons, I desire to know whether he is pardoned, or no?

L. C. J. I don't know that.

Col. Sidney. My Lord, how can he be a witness then?

L. C. J. Swear him: For I know no legal objection against him. He was a good witness in my Lord Russell's trial.

Col. Sidney. My Lord, if another did not except against him, 'tis nothing to me.

Mr. North. Pray give an account to the court of what you know of a general insurrection intended in England.

Col. Sidney. What he knows concerning me.

L. C. J. We will take care of that, that no evidence be given but what ought to be.

Col. Sidney. It is ordinary that he should say any thing, unless it be to me and my indictment?

L. C. J. Mr. Sidney, you remember in all the tryals about the late Popish plot, how there was first a general account given of the plot in Coleman's trial, and so in Plunket's, and others: I don't doubt but you remember it. And Sir William Jones, against whose judgment, I believe you won't object, was Attorney at that time.

North. Mr. West, what do you know of the general insurrection lately designed?

West. My Lord, I have had the honour to know Colonel Sidney several years; but I don't remember that I ever saw him from the time I came acquainted with any part of the conspiracy, till the discovery that was at the council.

North. Pray give an account of what you know of the plot in general.

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West. My Lord, in October last, Captain Walcot came to me, and told me that my Lord Shaftsbury had designed an insurrection in November; I used some arguments to dissuade him from it. But a little afterwards he came and told me, the thing was wholly disappointed, and then it went off, and my Lord Shaftsbury went for Holland. Colonel Rumsey afterwards about Christmas, said there were some Lords and gentlemen intended to make an insurrection. The persons were the Duke of Monmouth, my Lord of Essex, my Lord Howard, my Lord Russell, the prisoner at the bar, and Mr. Hambden, jun. After some time he told me they had altered their measures, and were resolved not to venture upon an insurrection in England, till they had a concurrency in Scotland. Afterwards I was not privy to any thing else, but what I had the report of from Mr. Nelthorp and Mr. Ferguson. Mr. Nelthorp told me the prisoner had said——

Col. Sidney. My Lord, I am very unwilling to interrupt the gentleman——

L. C. J. You must not interrupt the witness. Go on, Sir.

West. Mr. Nelthorp told me, the prisoner at the bar had sent Aaron Smith into Scotland, and given him a sum of money to bear his charges, and sent letters to some Scotch gentlemen to invite them to town. The letter bore a cant of settling some business in Carolina; but the business was coming up about the insurrection. After this Mr. Smith returned, and some Scotch gentlemen with him; and soon after Mr. Ferguson gave an account of that affair, and said, the Scotch proposed, if they might have thirty thousand pounds in ready money, they would undertake to make an insurrection in Scotland, without the concurrence of England. He said this proposal was agreed to, and money would be soon ready; and he said that Sheppard would return the money. That the arms were

7 L

ready

ready bought, and my Lord of Argyle would go into Scotland, and head the Scots. He told me when things were thus settled, some difference arose about raising the money; and at last he told me, my Lord Grey did offer to raise ten thousand pounds out of his own estate, if the rest would pay their proportion. Then the Scots came down to less, but that would not be complied with. The places for the rising were Bristol, Taunton, York, Chester, Exeter, London. That there had been some debates, whether they should begin at London, or the other places, and at last it was resolved they should begin at London with the rest of the places.

My Lord, this was the account I had of the matter in general of Mr. Ferguson; but he said they were disappointed. Afterwards he told me, the prisoner at the bar, and Major Wildman, were very instrumental in working of it off, because they could not agree upon the declaration to be made upon the insurrection. The English were for a common-wealth; but the Scotch gentlemen answered fairly, it might come to it in time, but the noblemen there would not agree to it at present. As to the prisoner in particular, I know nothing. and did never speak with him till since the discovery.

Att. Gen. Colonel Rumsey. [Sworn.

North. Pray, Sir, will you give the court an account of what you know of any insurrection intended, and how they designed to carry it on.

Col. Rumsey. My Lord, the latter end of October, or beginning of November, I was desired by my Lord Shaftsbury to go to Mr. Sheppard's, to know of the gentlemen that were met there, what was done about the rising intended at Taunton; and I had their answer, that Mr. Trenchard had failed them, and that it must cease for that time. That was all at that time.

Sol. Gen. What else do you know of any insurrection afterwards?

Col. Rumsey. After that we had several meetings at Mr. West's chamber, where we had divided the city into twenty parts, and seven parts Mr. Goodenough had brought an account of; the other thirteen he said nothing of; for he had not spoke with those that were to tell him how many men they would afford. There was there Captain Walcot, Mr. West, the two Goodenoughs, Mr. Borne, Mr. Wade, and myself.

L. C. J. What was the result of those debates?

Col. Rumsey. To see what number of men they could produce in the city for the insurrection.

L. C. J. Was there a rising designed?

Col. Rumsey. Yes,

L. C. J. And did these people meet?

Col. Rumsey. There was no time set.

Sol. Gen. When was the meeting?

Rumsey. There were several meetings in March, and April, and May.

Sol. Gen. After the meeting at Sheppard's?

Rumsey. Yes, a great while. It ceased, I think, six weeks or three months.

L. C. J. Who did you meet with at Mr. Sheppard's?

Rumsey. There was the Duke of Monmouth, my Lord Grey, my Lord Russel, Sir Thomas Armstrong, Mr. Ferguson and Mr. Sheppard.

Sol. Gen. Who did you expect should head this army?

Rumsey. That was never said any thing of.

Att. Gen. Who were to manage the rising?

Rumsey. We that met there.

Att. Gen. Had you no expectation of great men?

Rumsey. Mr. West told me, and Mr. Goodenough that there was a council, which were the Duke of Monmouth, my Lord Essex,

Essex, my Lord Howard, Colonel Sidney, Mr. Hambden, and my Lord Russell, there were six.

L. C. J. What did he tell you of them six?

Rumsey. He told me they were managing a business with Scotland.

L. C. J. A business, pray speak plain, tell all you know.

Col. Rumsey. For the insurrection.

L. C. J. Say so then, we know nothing of the business you were about.

Col. Rumsey. My Lord, Mr. West had that discourse with my Lord Howard I never had; he is more fit to speak to that than me.

L. C. J. Speak your own knowledge and no more.

Jones. After the death of my Lord Shaftsbury, who were the managers, and were to carry it on?

Col. Rumsey. I told you, Mr. West and Mr. Goodenough did tell me the Duke of Monmouth, my Lord Essex—

Att. Gen. He told you so before. Do you know there was an insurrection then intended?

Col. Rumsey. Yes, because we met towards the management of it, the company that met at Mr. West's chamber, and other places.

Att. Gen. What discourse had you with Mr. Ferguson about it?

Col. Rumsey. Not about those gentlemen.

North. The next thing we shall shew, shall be that the Scotchmen came to town.

Col. Sidney. My Lord, I must ever put you in mind, whether it be ordinary to examine men upon indictments of treason concerning me that I never saw, nor heard of in my life.

L. C. J. I tell you, all this evidence does not affect you, and I tell the jury so.

Col. Sidney. But it preposses the jury.

Mr. Keeling called and sworn,

Att. Gen. I ask you in general, what you know of the rising to have been last spring?

Keeling. My Lord, it was some time last summer, Mr. Goodenough came to me, and brought me three papers numbered on the back-side; I asked him to what end he delivered them me? He told me, one was for myself, and I was to deliver the other two to whom I could trust in the two divisions. I asked him, what was the design? He said, to raise men; says I, Do you design a general insurrection? He said, if he did not, if the King was taken off this would do well; for then people would know how to have recourse to a formidable body. And I have heard him say, that Colonel Sidney, whom I don't know, had a considerable part in the management of that affair.

Att. Gen. We charge him with conspiring, and there must be confederates in the case. Now then we come to the prisoner. We will call my Lord Howard, that was one of the persons that did consult.

The Lord Howard sworn.

Att. Gen. Pray acquaint my Lord and the jury of your knowledge, of what transactions there have been with the prisoner about this affair of the general rising.

L. Howard. Truly, my Lord, in the entering of the evidence I am about to give, I cannot but observe, what a natural uniformity there is in truth. For the gentlemen that have been before, have so exactly instanced, in every particular, with what I have to say, that two tallies could not more exactly fall into one another, though I confess I had not seen their faces,
till

ill the plot brake out, for some months before.

My Lord, and Gentlemen of the Jury, About the middle of January last, it was considered by some of us that met together, That it was very necessary and expedient to an enterprize that had been long in hand, and fallen flat then, that it should be revived by some consult or cabal that should be set up to give life to it, and governance to the motions of it. The first (for ought I know) movers of this, were the Duke of Monmouth, the gentleman at the bar, and myself: and there we did agree, that we should bethink ourselves of some few, we were willing it should not exceed five, at the most seven. This agreement being at first between us three; I remember the Duke of Monmouth undertook to engage my Lord Russel, and my Lord Salisbury; and this gentleman Colonel Sidney for my Lord of Essex, and Mr. Hambden; and these being put together, did presently constitute a little cabal, of as great a number as was intended, This being settled among them, it was within a few days after, I can't certainly tell when, but between the middle and latter end of January, that I was told, That the persons had agreed to enter into this conjunction of councils; and in order to that, they had appointed a meeting at Mr. Hambden's house, to which I was invited. This in time was between the middle and latter end of January, but I can't tell exactly. When we came there, there were all those gentlemen I before named, the Duke of Monmouth, my Lord Essex, my Lord Russel, Colonel Sidney, Mr. Hambden, and myself. It was at Mr. Hambden's house, which ranges on the same row with Southampton house: and being met, Mr. Hambden, I suppose, did think it most properly belonged to him to take upon him the part as it were to open the Sessions, that was, to give us a little account of the

reason, end, and intention of that meeting: In which discourse, he took occasion to recapitulate some design, that had been before chiefly carried on by Lord Shaftsbury, before this time dead; and also took notice of the ready disposition and inclination of the minds of men to go on with it; and did give one instance of his judgment of it, That it being a design communicated to so many, it had not been so much as revealed, or a murmur or a whisper gone about it: from whence he took occasion to tell us, that it was absolutely necessary for the future, there should be some council, that should be as a spring, a little to guide and govern the motions of the rest, for that there were divers things to be taken care of, which if not taken care of by particular persons, would all miscarry. This was the substance of the prologue and introduction he made. From hence he made a transition to some particular things, that he thought were most principally to be taken care of. And though it is impossible for me to remember the order and method in which we discoursed, or who said this or that, but that which the sense of all resulted to was this; That since we did not come prepared for it, we should consider what were the things that would hereafter challenge our particular care, that was, the time when, the places where, and the persons by whom these things should be carried on. This led into some particular discourse, concerning some of these heads: for the time; that it should be shortly, lest the minds of men should chill; and then as to the place where, whether in city or country, or both jointly. In all these, some opinions were given, but not settled to any resolution, but they were committed to our thoughts to be digested afterwards. But these being the things that every one was to take upon his thoughts, there was this pre-requisite to the undertaking, and that was to consider what magazines were

to

to be got; and that led to another particular, which was, with what they should be gotten, and that was money; and thereupon was propounded a considerable sum to be raised: and as I remember, the sum propounded by the Duke of Monmouth was twenty five thousand pounds, or thirty thousand pounds. And then it was considered, how it should be raised without drawing observation or jealousy. These are only the heads that were then agreed on, hereafter to be better considered. But the present resolution that was taken, was, that before any procedure was made in any of these things, or any advance towards the undertaking; the first thing to be considered, was, how to make a coalition of councils between Scotland, and what we were doing here; and for that purpose, we should bethink ourselves of some fit person to be sent thither, to unite us into one sense and care. This is as much as occurs to my memory upon that meeting. About a fortnight or three weeks after, which I suppose carried it to the middle of February next, we had another meeting, and that was at Southampton house at my Lord Russel's, and there were every one of the same persons; and when we came there, there happened to fall in a discourse which I know not how it came in, but it was a little warmly urged, and thought to be untimely, and unseasonable; and that I remember was by Mr. Hambden, who did tell us, that having now united ourselves into such an undertaking as this was, it could not but be expected, that it would be a question put to many of us; To what end all this was? where it was we intended to terminate? into what we intended to resolve? That these were questions he met with; and it was probable, every one had or would meet with from those persons whose assistance we expected; and that if there was any thing of a personal interest designed or intended, that there were but very few of those, whose hearts were now with

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us, but would fall off: And therefore, since we were upon such an undertaking, we should resolve ourselves into such principles, as should put the properties and liberties of the people into such hands, as it should not be easily invaded by any that were trusted with the supreme authority of the land; and it was mentioned to resolve all into the authority of the Parliament. This was moved by him, and had a little harshness to some that were there; but yet upon the whole matter we generally consented to it; that it was nothing but a public good that we all intended. But then after that, we fell to that which we charged ourselves with at the first meeting, and that was concerning sending into Scotland, and of settling an understanding with my Lord of Argyle. And in order to this, it was necessary to send a messenger thither to some persons, whom we thought were the most leading men of the interest in Scotland; this led us to the insisting on some particular persons; the gentlemen named, were my Lord Melvin, Sir John Cockram, and the Campbells; I am sure it was some of the alliance of my Lord of Argyle, and I think of the name. As soon as this was propounded, it was offered by this gentleman, Colonel Sidney, that he would take the care of the person; and he had a person in his thoughts, that he thought a very fit man to be entrusted; one or two, but one in special, and he named Aaron Smith to be the man, who was known to some of us, to others not; I was one that did know him, and as many as knew him, thought him a proper person. This is all that occurs to me that was at the second meeting, and they are the only consults that I was at.

Att. Gen. What was he to do?

Lord Howard. There was no particular deed for him, more than to carry a letter. The Duke of Monmouth undertook to bring my Lord Melvin hither, because he had a particular dependance upon him, and

7 M

I think

I think some relation to his lady : But to Sir John Cockram there was a letter to be sent under the disguise of carrying on some business of the plantation in Carolina. This letter I suppose was writ by my Lord Russell (though I know it not) for he was personally known to my Lord Russell, and I do not know that he was known to any of us. About three weeks after this, then he was dispatched I suppose.

Att. Gen. To what purpose were these gentlemen to come up ?

Lord Howard. These were to acquaint us how they found Scotland tempered, and what opportunities or advantages there were or might be of putting them into a commotion, and how men might be raised, and how they would fall under Argyle, and also to keep time and place with us. After this, I was with Colonel Sidney, when he was going into London, and he did take out several guineas, I cannot tell how much it was, I suppose they might be about sixty, and put them into his pocket (and set me down at my lodging) which he said were to give Aaron Smith ; whether he gave it or no, I do not know ; and after that he was sent.

Att. Gen. Who told you so ?

Lord Howard. Colonel Sidney, for I was enquiring of him ; and he said, he had not heard of him in three weeks, or but once, when he was about Newcastle. After this, I had occasions that called me into the country, and there I was. Some time after that I went to the bath : And this is all the account I can give.

Sol. Gen. Do you know that Aaron Smith did go ?

Lord Howard. I know nothing but by hearsay. Colonel Sidney told me he was gone, and was upon the road, and he heard from him about Newcastle.

E. C. J. Did you understand by the discourse after he was gone, that he went in pursuance of that debate ?

Lord Howard. Yes, my Lord, that was the whole end of his going.

Just. Withins. I think you say, that gentleman (speaking of Colonel Sidney) undertook to send him ?

Lord Howard. Yes, he did.

L. C. J. Will you ask him any questions ?

Sidney. I have no questions to ask him.

Att. Gen. Silence—You know the proverb. The next step is to shew you, my Lord, that these persons came up immediately after Aaron Smith went down thither, and according to that which was said to be the shadow and pretence of their coming hither, they pretended they came about Carolina business. Sir Andrew Foster and Mr. Blathwaite.

Sir Andrew Foster sworn.

Att. Gen. Pray, Sir, give an account what Scotch gentlemen came up lately.

Sir Andrew Foster. My Lord, about the end of the spring, or beginning of summer, as I remember, these gentlemen, Sir John Cockram, and Commissary Monro, and the two Campbells, father and son, came up hither. I did not see the father at all, but I saw the son the day of the Lord Russell's trial ; but the other two, I think, I saw a little before the discovery of the plot.

Att. Gen. What did they pretend they came about ?

Sir Andrew Foster. They pretended they came to make a purchase in Carolina, and I saw their commission from the persons said to be concerned in that design.

E. C. J. Who do you speak of ?

Sir Andrew Foster. Sir John Cockram and Commissary Monro.

Att. Gen. As soon as the rumour came of the plot, what became of those gentlemen ?

Sir Andrew Foster. Sir John Cockram absconded, but Commissary Monro never absconded,

absconded, and the Campbells I heard were seized changing their lodging from place to place.

Mr. Atterbury sworn.

Att. Gen. Mr. Atterbury, will you give my Lord and the jury an account what you know of these Scotch-men, their absconding and lying hid.

Atter. My Lord, upon the latter end of June, or the beginning of July, the beginning of July it was, I was sent for into London upon a discovery of some Scotch Gentlemen that lay about Black-Friars; and when I came down there, there was the Common Serjeant and some others, had been there before me, and found them making an escape into a boat.

Att. Gen. Who were they?

Atter. Sir Hugh Campbel, and Sir John Cockram, and one that was committed to the Gatehouse by the council as soon as brought thither.

Att. Gen. We shall end here, my Lord. How long had they been in town?

Atter. They had been in town some little time.

Att. Gen. We have done with this piece of our evidence. Now, to shew that while this emissary was in Scotland, at the same time the Colonel (which will be another overt act of the treason) was, writing a treasonable pamphlet. I will call you the witnesses. It is all of his own writings. Sir Philip Lloyd.

Att. Gen. Sir Philip Lloyd, pray will you look upon those papers, and give my Lord and the jury an account where you found them.

Sir Philip Lloyd. I had a warrant, my Lord, from the Secretary by the King and council, to seize Mr. Algernon Sidney's papers, and pursuant to it, I did go to his house, and such as I found there I put up. I found a great many upon the table,

amongst which were these, I suppose it is where he usually writes, I put them in a pillow-bear I borrowed in the house, and that in a trunk; I desired Colonel Sidney would put his seal upon them, that there should be no mistake; he refused, so I took my seal, and sealed up the trunk, and it was carried before me to Mr. Secretary Jenkin's office. When the committee sat, I was commanded to undo the trunk, and I did so, and found my own seal upon it. And I took the papers out of the bag I put them into before.

L. C. J. Was Col. Sidney present when you seized these papers?

Sir Phil. Lloyd. Yes.

Att. Gen. Are these some of those papers?

Sir Phil. Lloyd. Yes, I verily believe it.

Att. Gen. In the next place, I think we have some papers of his particular affairs which will prove his hand. Call Mr. Sheppard, Mr. Cooke and Mr. Carey.

Mr. North. Sir Philip Lloyd, when were they seized?

Sir Phil. Lloyd. Towards the latter end of June, my Lord.

Jury-man. Which June?

Sir Phil. Lloyd. Last June.

Mr. Sheppard sworn.

Att. Gen. Pray will you look upon those writings. (Shewing the libel.) Are you acquainted with Col. Sidney's hand?

Shep. Yes, my Lord.

Att. Gen. Is that his hand writing?

Shep. Yes, Sir, I believe so. I believe all these sheets to be his hand.

Att. Gen. How come you to be acquainted with his hand?

Shep. I have seen him write the indorsement upon several bills of exchange.

Mr. Cary sworn.

Sidney.

Sidney. My Lord, I desire you would please to consider this, that similitude of hands can be no evidence.

L. C. J. Reserve yourself till anon, and make all the advantageous remarks you can.

Att. Gen. Have you had any dealing with him?

Cary. I never saw him write, to my knowledge, more than once in my life, but I have seen his indorsement upon bills, and 'tis very like that.

L. C. J. Do you believe it his hand, as far as you can guess?

Cary. My Lord, it is like what came to me for his hand-writing.

L. C. J. And you believe it to be his hand?

Cary. Yes.

Mr. Cooke sworn, and the papers shewn him.

L. C. J. What say you, Mr. Cooke?

Cooke. My Lord, I did never see Colonel Sidney write, but I have seen several notes that have come to me with indorsement of his name, and we have paid them, and 'tis like to this.

L. C. J. And you were never called to account for mispayment?

Cooke. No, my Lord.

Att. Gen. I pray it may be read. We will read as much as is necessary to prove the indictment.

Col. Sidney. I pray it may be all read.

L. C. J. Mr. Attorney must have what part he desires read, and you shall have what part you will have read afterwards.

Col. Sidney. I desire it may all be read.

Att. Gen. Begin there. Secondly, There was no absurdity in this, because it was their own case.

Clerk reads.

2dly, There was no absurdity in this, tho' it was their own case; but to the contrary, because it was their own case; that is, con-

cerning themselves only, and they had no superior. They only were the competent judges, they decided their controversies, as every man in his own family doth, such as arise between him and his children, and his servants. This power hath no other restriction, than what is put upon it by the municipal law of the country, where any man, and that hath no other force, than as he is understood to have consented unto it. Thus in England every man (in a degree) hath a right of chastising them; and in many places (even by the law of God) the master hath a power of life and death over his servant: It were a most absurd folly to say, that a man might not put away, or in some places kill an adulterous wife, a disobedient son, or an unlawful servant, because he is party and judge, for the case doth admit of no other, unless he hath abridged his own right by entering into a society where other rules are agreed upon, and a superior judge constituted, there being none such between King and people: That people must needs be the judge of things happening between them and him whom they did not constitute, that they might be great, glorious, and rich; but that they might judge them, and fight their battles; or otherwise do good unto them, as they should direct. In this sense, he that is *singulis Major*, and ought to be obliged by every man, in his just and lawful commands, tending to the public good: And must be suffered to do nothing against it, nor in any respect more than the law doth allow.

For this reason Bracton saith, that the King hath three superiors, to wit, *Deum, Legem, & Parliament*; that is, the power, originally in the people of England, is delegated unto the Parliament. He is subject unto the law of God as he is a man, to the people that makes him a King, in as much as he is a King: The law sets a measure unto that subjection, and the Parliament judges

judges of the particular cases thereupon arising : he must be content to submit his interest unto theirs, since he is no more than any one of them, in any other respect, than that he is, by the consent of all, raised above any other.

If he doth not like this condition, he may renounce the crown ; but if he receive it upon that condition, (as all magistrates do the power they receive) and swear to perform it, he must expect that the performance will be exacted, or revenge taken by those that he hath betrayed.

If this be not so, I desire to know of our author, how one or more men can come to be guilty of treason against the KING, As *Lex facit ut sit Rea*. No man can owe more unto him than unto any other ; or he unto every other man by any rule but the law ; and if he must not be judge in his own case, neither he nor any other by power received from him, would ever try any man for an offence against him, or the law.

If the King, or such as he appoints, cannot judge him, he cannot be judged by the ways ordinarily known amongst us. If he, or other by authority from him, may judge, he is judge in his own case, and we fall under that which he accounts the utmost of all absurdities : If a remedy be found for this, he must say that the King in his own case may judge the people, but the people must not judge the King, because it is theirs ; that is to say, the servant entertained by the master may judge him, but the master must not judge the servant, whom he took only for his own use. The magistrate is bound by no oath or contract to the people that created him, but the people are bound to its own creature, the magistrate.

This seems to be the ground of all our author's follies ; he cannot comprehend that magistrates are for or by the people, but makes this conclusion, as if nations

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were created by or for the glory or pleasure of magistrates, and affect such a piece of nonsense ; it ought not to be thought strange, if he represent, as an absurd thing that the headless multitude may shake off the yoke when they please. But I would know how the multitude comes under the yoke, it is a badge of slavery. He says, that the power of Kings is for the preservation of liberty and property. We may therefore change or take away Kings without breaking any yoke, or that made a yoke which ought not to be one ; the injury is therefore in making or imposing, and there can be none in breaking it.

That if there be not an injury, there may perhaps be an inconvenience ; if the headless multitude may shake off the yoke, I know not why the multitude should be concluded to be headless ; it is not always so. Moses was head of the multitude that went out of Egypt. Othniel led them against the King of Mesopotamia, under the conduct of Phœbidas ; they obtained a victory against the Moabites, they had the like success under Shamger, Barac, Gideon, Jephtha, Samuel, Sampson, and others against the Canaanites, Midianites, Philistines and others ; the multitude that opposed Saul and Ishbosheth had David for its head ; and the ten tribes that rejected Reoboam chose unto themselves Reoboam ; the Athenians rising against the Thirty Tyrants had Thrafsybulus ; those that drave — from Thebes were conducted by Pelopidas : When the Romans drave out the Tarquins, they chose Brutus and Publicola, and they destroyed the Decemviri under Horatius and Valerius. All the multitudes that afterwards revolted from them under Mauritius, Telerius, Spartanus and others, were not headless ; and we know of none that were, but all either found heads, or made them. The Germans set up Arminius ; the Britains, and others in later times,

times, the Cartimians, that rose against Peter the Cruel, had the Lord Detrahta Mara.

The French when they grew weary of the corrupted races of Pharamond and Pepin, and the same Pepin and Hugh Capet: The Scots, when they slew James III. had his son to be their head; and when they deposed and imprisoned Queen Mary, the Earl of Murray and others supplied the want of age that was in her son: And in all the revolutions we have had in England, the people have been headed by the Parliament, or the nobility and gentry that composed it; and when the Kings failed of their duties, by their own authority called it. The multitude therefore is not ever headless, but doth either find or create heads unto itself, as occasion doth require; and whether it be one man, or a few, or more, for a short or a longer time, we see nothing more regular than its motions. But they may, saith our author, shake off the yoke; and why may they not, if it prove uneasy or hurtful unto them? Why should not the Israelites shake off the yoke of Pharaoh, Jabin, Sisera, and others that oppressed them?

When pride had changed Nebuchadnezzar into a beast, what should persuade the Assyrians not to drive him out amongst beasts, until God had restored unto him the heart of a man? When Tarquin had turned the regal monarchy of Rome into a most abominable tyranny, why should they not abolish it? And when the Protestants of the Low Countries were so grievously oppressed by the power of Spain, under the proud, cruel and savage conduct of the Duke of Alva, why should they not make use of all the means that God had put into their hand for their deliverance? Let any man who sees the present state of the provinces that then united themselves, judge whether it is better for them to be as they are, or in the condition unto which his

fury would have reduced them, unless they had, to please him, renounced God and their religion: Our author may say they ought to have suffered: The King of Spain by their resistance lost those countries; and that they ought not to have been judges in their own case. To which I answer, that by resisting they laid the foundation of many churches, that have produced multitudes of men, eminent in gifts and graces; and established a most glorious and happy commonwealth, that hath been since its first beginning, the strongest pillar of the Protestant cause now in the world, and a place or refuge unto those who in all parts of Europe have been oppressed for the name of Christ: Whereas they had slavishly, and, I think I may say, wickedly as well as foolishly, suffered themselves to be butchered, if they had left those empty provinces under the power of antichrist, where the name of God is no otherwise known than to be blasphemed.

If the King of Spain desired to keep his subjects, he should have governed them with more justice and mercy; when, contrary unto all laws both human and divine, he seeks to destroy those he ought to have preserved, he can blame none but himself, if they deliver themselves from his tyranny: And when the matter is brought to that, that he must not reign, or they over whom he would reign, must perish; the matter is easily decided, as if the question had been asked in the time of Nero or Domitian, Whether they should be left at liberty to destroy the best part of the world, as they endeavoured to do, or it should be rescued by their destruction? And as for the people's being judges in their own case, it is plain, they ought to be the only judges, because it is their own, and only concerns themselves.

Att. Gen. The latter end, the last sheet of all. § 35.

L. C. 7. The

L. C. J. The argument runs through the book, fixing the power in the people.

Cl. of Cr. The general revolt of a nation from its own magistrates, can never be called rebellion.

Att. Gen. §. 37.

Cl. of Cr. The power of calling and dissolving Parliaments is not in the King.

Att. Gen. So much we shall make use of; if the Colonel please to have any other part read to explain it, he may.

Then the sheets were shewn to Colonel Sidney.

Col. Sidney. I do not know what to make of it, I can read it.

L. C. J. Ay, no doubt of it, better than any man here. Fix on any part you have a mind to have read.

Col. Sidney. I do not know what to say to it, to read it in pieces thus.

L. C. J. I perceive you have disposed them under certain heads: To what heads will you have read?

Col. Sidney. My Lord, let him give an account of it that did it.

Att. Gen. My Lord, we will not delay *Col. Sidney* from entering on his defence, only we have this piece of evidence to give further. One of his complices was my Lord Russell, we will give in evidence his conviction. We will only ask my Lord Howard, Was your Lordship sworn as a witness at the trial of my Lord Russell?

L. Howard. Yes.

Att. Gen. Whether or no, when you met, were there in those debates any reflections upon the King, that he had broken his duty?

L. Howard. Not that I remember.

Att. Gen. Why would you rise?

L. Howard. If you mean upon the misgovernment, not personally upon the King?

Att. Gen. Ay.

L. Howard. Yes, and principally and chiefly that, which we thought was the

general disgust of the nation, the imposing upon the city at that time.

Just. Wilbins. That was complained of at that time?

L. Howard. Yes, my Lord, we took it all along to be the chief grievance.

L. C. J. Have you any more witnesses?

Att. Gen. Only the record.

Sol. Gen. I know there is no time mispent to make things clear. If the jury have a mind to have the words read again—

L. C. J. If they have a mind, let it.

Then Mr. Trinder was sworn, and testified it to be a true copy of the record, and said he examined it at Fishmongers-hall with Mr. Tanner.

Then the record of the conviction of the Lord Russell was read.

L. C. J. What will you go to next, Mr. Attorney.

Sol. Gen. We have done, unless the jury desire to have the words of the libel read again. [But they did not.]

Col. Sidney. My Lord, I desire to know upon what statute I am indicted.

Att. Gen. My Lord, I will give as plain an answer, you are indicted upon the old statute of 25 Edw. 3.

Col. Sidney. Then I desire to know upon what branch of that statute?

Att. Gen. Why, I will acquaint you, 'tis upon the first branch of that statute, for conspiring and compassing the death of the King.

Col. Sidney. Then I conceive, what does not come within that, does not touch me.

Att. Gen. Make what inferences you please, Colonel, we will answer you.

Col. Sidney. I desire to know what the witnesses have sworn against me upon that point?

Att. Gen. Go on, you have heard the witnesses as well as we.

L. C. J. He says, you are indicted upon the statute of 25 Edw. 3. which statute makes

makes it High-Treason to conspire the death of the King, and the overt-act is sufficiently set forth in the indictment; now the question is, whether 'tis proved?

Col. Sidney. They have proved a paper found in my study of Caligula and Nero, that is compassing the death of the King, is it?

L. C. J. That I shall tell the jury. The point in law you are to take from the court, gentlemen: Whether there be fact sufficient, that is your duty to consider.

Col. Sidney. I say, my Lord, that since I am indicted upon that statute, I am not to take notice of any other. I am indicted for conspiring the death of the King, because such a paper is found in my house; under favour, I think, that can be nothing at all to me. Forthough Sir Phil. Lloyd did ask me, whether I would put my seal to it, he did not ask me till he had been in my closet, and I knew not what he had put in, and so I told him I would not do it. Then come these gentlemen upon similitude of hands. My Lord, we know what similitude of hands is in this age. One told me within these two days, that one came to him, and offered to counterfeit any hand he should shew him in half an hour. So then, my Lord, I have nothing to say to these papers. Then for point of witness, I cannot be indicted, much less tried or condemned on 25 Edw. 3. for by that act there must be two witnesses to that very branch unto which the treason does relate, which must be distinguished. For the levying of war, and conspiring the death of the King, are two distinct things, distinct in nature and reason, and so distinguished in the statute. And therefore the conspiring the death of the King is treason, and the other not. 1 Edw. 6. 12. 5 Edw. 6. 11. does expressly say, there must be two witnesses to either of these acts. Now here is my Lord Howard, (I have enough to say of him by and by) 'Tis he only who speaks of six

men, whom he calls a select council, and yet selected by no man in the world. I desire to know who selected my Lord Howard? Who selected me? If they were selected by no body, 'tis a bull to say they were a select council. If they were not selected, but erected themselves into a cabal, then they have either confidence in one another, or find they are near equally able to assist in the design. Here is nothing of all this, — These six men were strangers to one another. For my own part, I never spake with the Duke of Monmouth above three times in my life, and one time was when my Lord Howard brought him to my house, and cozened us both. He told the Duke I invited him, and he told me the Duke invited himself, and neither of them was true. Now that such men as these are, not hardly knowing one another, should presently fall into a great and intimate friendship, and trust and management of such a business as this is, is a thing utterly improbable, unless they were mad. Now I do find in my Lord Howard's deposition against my Lord Russel, that they were in prosecution of my Lord Shaftsbury's design; and yet he acknowledges the Duke of Monmouth said he was mad, and he himself said so too. Now that they should join with four more in the prosecution of the design of a madman, they must be mad too. Now whether my Lord Howard would have you think he was mad, because a madman cannot be guilty of treason, I cannot tell. My Lord Howard in his last deposition at my Lord Russel's trial, fixes the two meetings, one about the middle of January, the other ten days after: Now he fixes one to be the latter end of January, the other the middle of February. Then he makes it to be the prosecution of my Lord Shaftsbury's design. I do not find that any one there had any thing to do with my Lord Shaftsbury, for my part I had not. I had not seen his face in two years. Then, my Lord,

Lord, that I go upon is, whatever my Lord Howard is, he is but one witness. The law of God, and the law of man, understood and taken by all men, does require two witnesses; Moses says so, so the Apostles the same after him, and Christ says the same, That every matter is to be established by two witnesses. There ought to be two witnesses to the same thing. Now for one to come and tell a tale of a tub, of an imaginary council, and another of a libel, a paper written nobody knows when, is such a thing, you never can go over it. But if the law of God be, that there must be two witnesses to the same fact, there is an end of this matter. And under the judicial law, the penalty would be in this case, to put a man to death. Now here there are but two things, which if allowed of, nobody will be safe for perjury. The one is to suffer men to give their testimony, one to one thing, and another to another, that the fraud cannot be discovered; and the other is to take away the punishment. Now the punishment is taken away in some measure: And do but take away the other point, whereby the fraud cannot be discovered; and then there is no defence can be made. That both witnesses should be to the same point; see the story of Susanna. Two elders testified they saw her in the act of adultery: They were carrying of her to death; both of them said the same thing; until they were taken asunder and examined, the fraud was not discovered; and then one said, she was under a tree of the right hand, and the other, under the tree on the left; and she escaped, and they were punished. But now if you apply it to several facts, my Lord Howard may say what he pleases, and if another shall come with a supplemental proof, no justice can be had. But, my Lord, I desire this, if there be two witnesses to prove the conspiracy, and in that there were those matters done that are treason, I must answer to it;

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but if there be not, I presume, I need say nothing to it. If you do not allow it me, I desire counsel to argue it.

L. C. J. That is a point of fact, whether there be two witnesses? I tell you beforehand, one witness is not sufficient.

Col. Sidney. Why then there is my Lord Howard, and never another.

L. C. J. Nay, do not make those insinuations; I will tell the jury, if there be not two witnesses as the law requires in this case, they ought to acquit you.

Col. Sidney. You confound me, I cannot stir. You talk of a conspiracy; what is a conspiracy to kill the King? Is there any more witnesses than one for levying of war?

L. C. J. Pray do not deceive yourself; you must not think the court and you intend to enter into a dialogue. Answer to the fact; if there be not sufficient fact, the jury will acquit you. Make what answer you can to it.

Col. Sidney. Then I say, there being but one witness, I am not to answer to it at all.

L. C. J. If you reply upon that, we will direct the jury presently.

Col. Sidney. Then for levying war, what does any one say? My Lord Howard, let him if he please, reconcile what he hath said now, with what he said at my Lord Russel's trial. There he said, he said all he could; and now he has got I do not know how many things that were never spoken of there. I appeal to the court, whether he did then speak one word of that, that he now says of Mr. Hamden. He sets forth his evidence very rhetorically, but it does not become a witness, for he is only to tell what is done and said, but he does not tell what was done and said. He says, they took upon them to consider, but does not say what one man said, or what one man resolved, much less what I did. My Lord, if these things are not to be distinguished.

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but shall be jumbled all up together, I confess I do not know what to say.

L. C. J. Take what liberty you please. If you will make no defence, then we will direct the jury presently. We will direct them in the law, and recollect matter of fact as well as we can.

Sidney. Why then, my Lord, I desire the law may be reserved to me, I desire I may have counsel to that point of there being but one witness.

L. C. J. That is a point of fact. If you can give any testimony to disparage the witness, do it.

Sidney. I have a great deal to that.

L. C. J. Go on to it then.

Sidney. Then, my Lord, was there a war levied? or was it prevented? Why then, if it be prevented, it is not levied; if it be not levied, it is not within the statute; so this is nothing to me.

L. C. J. The court will have patience to hear; but at the same time I think it is my duty to advertise you, that this is but mispending of your time. If you can answer the fact, or if you have any mind to put any disparagement upon the witnesses, that they are not persons to be believed, do it, but do not ask us questions this way or the other.

Sidney. I have this to say concerning my Lord Howard: He hath accused himself of divers treasons, and I do not hear that he has his pardon of any: he is under the terror of those treasons, and the punishment for them; he hath shewn himself to be under that terror: He hath said, that he could not get his pardon, until he had done some other jobs, till he was past this drudgery of swearing: That is, my Lord, that he having incurred the penalty of high-treason, he would get his own indemnity by destroying others. This by the law of God and man, I think, destroys a man's testimony. Besides, my Lord, he is my debtor, he owes me a considerable sum of money. I

lent him in time of his great necessity; he made some covenants with me for the payment of that money, which he hath broken; and when his mortgage was forfeited, and I should take the advantage the law gives me, he finds out a way to have me laid up in the Tower: He is a very subtle man; at my Lord Russel's trial he carried his knife, he said, between the paring and the apple; and so this is a point of great nicety and cunning; at one time to get his own pardon, and at the same time to save his money. Another thing, my Lord, is, when I was prisoner, he comes to my house, and speaks with my servant, and says, how sorry he was that I should be brought in danger upon this account of the plot, and there he did in the presence of God, with hands and eyes lifted up to heaven, swear he did not believe any plot, and that it was but a sham; and that he was confident if I had known any thing, I would have told it him. He hath said somewhat of this before, I have several witnesses to prove both. He was desirous to go further, and he would not only pay my debt by his testimony against me, but he would have got my plate and other goods in my hands into his hands, and he desired my man, as a place of trust, to put them into his hands. And the next news was, that there was a warrant against my Lord Russel and me. But then, my Lord, he made other affirmations in the same presence of God, that I was innocent in his opinion, and he was confident of it; for if he had known any thing of it, he would have told it. Now I know, in my Lord Russel's case, there was Doctor Burnet said something like it. And when he came to answer it, he said he was to face it out, and make the best of it he could. Now he did face it out bravely against God, but he was very timorous of man. So that my Lord, he does say at the same time, at my Lord Russel's trial, upon his oath, that he did believe that the religious obligation of an oath, did not consist in the

the formality of applying it to the place, &c. but in calling God to witness. So that when he did call God to witness before Doctor Burnet and my servant, and others, and this is not consistent with the oath he has taken here, as the gentleman said at my Lord Russell's trial, unless he has one soul in court, and had another at my house, these things are inconsistent, and cannot be true; and if he swear both under the religion of an oath, he swears himself perjured. Then, my Lord, he talks of Aaron Smith, what have I to do with Aaron Smith? He says, I sent him; my Lord, there is no body else speaks a word of it. Then by a strange kind of construction and imagination, they will have it, that some papers here, which are said to be found in my study, have relation to this plot, as they call it; I know of none, nor am in none. Now, my Lord, I am not to give an account of these papers, I do not think they are before you, for there is nothing but the similitude of hands offered for proof. There is the like case of my Lady Carr some few years ago: She was indicted of perjury, and as evidence against her, some letters of hers were produced, that were contrary to what she swore in Chancery, and her hand was proved; that is to say, it was like it: But my Lord Chief Justice Keiling directs the jury, that though in civil causes it is a proof, yet it is the smallest and least of proofs; but in criminal cases it was none at all. So that my Lord Howard's testimony is single; and what he talks of those two businesses that he calls a consult, and Aaron Smith is destroyed by want of proof. What could six men do? can my Lord Howard raise five men by his credit? by his purse? Let him say as much for me, with all my heart; for my part I do not know where to raise five men. That such men as we are, that have no followers, should undertake so vast a design, is very unlikely: And this great design that was carried on thus, it had neither officers nor soldiers, no place, no time,

no money for it. That which he said last time, which he forgot now, he talked of twenty five, or thirty thousand pound, but no man knew where it was to be had; but last time he said, it was spoken in jest. Now this is a pretty cabal, that six men should meet about a business, and they neglect every one of the points relating to the thing they met about, make no step about the business, and if any one did speak of it, it was but in jest. This is a very deep maintaining of the plot. Then, my Lord, as to these papers, I do not think, I am to give any account of them, I would say nothing to the disparagement of Sir Philip Lloyd, I never saw him till he came to my house, but yet I say he is the King's officer, and when I am prosecuted at the King's suit, I think he ought to be no witness. The government of France is violent and absolute; but yet a few years ago, a minister of state had his papers taken from him, and abundance of them had dangerous plots against the King in them; but because they were inventoried in his officers presence, or those deputed by him, there was no use could be made of them, it was an irreparable fault in the process, and that saved him. The similitude of hands is nothing: We know that hands will be counterfeited, so that no man shall know his own hand. A gentleman that is now dead, told me, that my Lord Arlington about five years ago, desired him to write a letter, and seal it as well as he could; he writ it with care, and sealed it with a wafer and wax upon it, and within a few days, my Lord Arlington brought him five letters, and he did not know which was his own. The Attorney shews these papers to me, I do not know whether they are my own or no; but these very papers, such as they are, do abhor as much as any one can, such a design. Look upon them, you see they are all old ink. These papers may be writ perhaps, these twenty years, the ink is so old. But my Lord,

Lord, it is a polemical discourse, it seems to be an answer to Filmar, which is not calculated for any particular government in the world: It goes only upon these general principles, that according to the universal law of God and nature, there is but one government in the world, and that is entire and absolute; and that the King can be bound by no law, by no oath, but he may make all laws, and abolish them as he pleases: And this whether of age or no, a man, or a child of sense, or out of his sense. Now, my Lord, what if any man in his cabinet should have written this book? Then he has another principle, he says, it is the same thing whether a King come in by election, by donation, by inheritance, or usurpation, or any other way; than which, I think, never was a thing more desperately said. Cromwell, when one White a priest wrote a book, wherein he undertook to prove, "That possession was the only right to power," though he was a tyrant, and a violent one, (you need not wonder I call him tyrant, I did so every day in his life, and acted against him too) it would be so odious a principle, he would not endure it, and he used him very slightly for it. Now this Filmar, that no man must write against, is the man that does assert it, that it is no matter how they come by their power; and gives the same power to the worst usurpers, as they that most rightly come to the crown. By the same argument, if the errantest rascal of Israel had killed Moses, David, &c. and seized upon the power, he had been possessed of that power, and been father of the people. If this be doctrine, my Lord, that is just and good, then I confess it may be dangerous for any thing to be found in a man's house contrary to it; but if a Commoner of England write his present thoughts, and another man looking on his book writes his present thoughts of it, what great hurt is there in it? And I

ask, Mr. Attorney how many years ago that was written?

L. C. J. I do not know what the book was in answer to. We are not to speak of any book that Sir Robert Filmar wrote, but you are to make your defence, touching a book that was found in your study, and spend not your time, and the court's time, in that which serves to no other purpose, than to gratify a luxuriant way of talking that you have. We have nothing to do with his book, you had as good tell me again, that there was a parcel of people rambling about, pretending to my Lord Russel's ghost, and so we may answer all the comedies in England. Answer to the matter you are indicted for. Do you own that paper?

Sidney. No, my Lord.

L. C. J. Go on then, it does not become us to be impatient to hear you, but we ought to advertise you, that you spend not your time to no purpose, and do yourself an injury.

Sidney. I say first, it is not proved upon me: And secondly, it is not a crime if it be proved—

L. C. J. You began very materially in one thing, it is material for you to apply yourself to take off the credibility of my Lord Howard that is a witness; call your witnesses to that purpose, or if you have any other point to take away the credibility of any other witness.

Sidney. My Lord, I have seven or eight points of law.

L. C. J. I hear not one yet.

Sidney. Why, my Lord, conspiring to levy war is not treason, and I desire to have counsel upon that.

L. C. J. It is not a question, you had as good ask me whether the first chapter in Littleton be law?

Sidney. My Lord, I have neither made war, nor conspired to levy war.

L. C. J.

L. C. J. You are still in a mistake, you shall not think that we intend to dialogue with you, to let you know how far the proof hath been given or not given, but when we come to direct the jury, then we shall observe how far the law requires there should be two witnesses. But whether there be such a proof, that must be left to the jury.

Just. Withins. If you agree the conspiracy, I will tell you my mind of it; I cannot give you my opinion in law, till the fact be stated.

L. C. J. The law always rises upon a point of fact; there can be no doubt in point of law, till there be a settlement in point of fact.

Just. Holloway. My Lord has put you in a right way: The conspiracy is proved but by one witness, if you have any thing to take off his credibility, it is to the purpose.

Sidney. Truly, my Lord, I do as little intend to mispend my own spirit, and your time, as ever any man that came before you. Now, my Lord, if you will make a concatenation of one thing, a supposition upon supposition, I would take all this asunder, and shew, if none of these things are any thing of themselves, there can be nothing joined together.

L. C. J. Take your own method, Mr. Sidney, but I say, if you are a man of low spirits and weak body, it is a duty incumbent upon the court, to exhort you not to spend your time upon things that are not material.

Sidney. My Lord, I think it is very material, that a whimsical imagination of a conspiracy, should not pass for a real conspiracy of the death of the King; besides, if these papers were found in my house, it is a crime created since my imprisonment, and that cannot come in, for they were found since. My Lord, if these papers are right, it mentions two hundred and odd

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sheets, and these show neither beginning nor ending; and will you my Lord, indict a man for treason, for scraps of paper found in his house, relating to an ancient paper, intended as innocently as any thing in the world, and piece and patch this to my Lord Howard's discourse, to make this a contrivance to kill the King? Then, my Lord, I think it is a right of mankind, and it is exercised by all studious men, that they write in their own closets what they please for their own memory, and no man can be answerable for it, unless they publish it.

L. C. J. Pray do not go away with that right of mankind, that it is lawful for me to write what I will in my own closet, unless I publish it; I have been told, curse not the King, not in thy thoughts, not in thy bed-chamber, the birds of the air will carry it. I took it to be the duty of mankind to observe that.

Sidney. I have lived under the inquisition—

L. C. J. God be thanked we are governed by law.

Sidney. I have lived under the inquisition, and there is no man in Spain can be tried for heresy—

Just. Withins. Draw no presidents from the inquisition here I beseech you, Sir.

L. C. J. We must not endure men to talk, that by the right of nature every man may contrive mischief in his own chamber, and he is not to be punished, till he thinks fit to be called to it.

Sidney. My Lord, if you will take scripture by pieces, you will make all the penmen of the scripture blasphemous; you may accuse David of saying, there is no God; and accuse the Evangelists of saying, Christ was a blasphemer and a seducer; and the Apostles, that they were drunk.

L. C. J. Look you, Mr. Sidney, if there be any part of it that explains the sense of it, you shall have it read; indeed we are trifled with a little. It is true, in scripture

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it is said, there is no God, and you must not take that alone, but you must say, the fool hath said in his heart, there is no God. Now here is a thing imputed to you in the libel; if you can say, there is any part that is in excuse of it, call for it. As for the purpose, whoever does publish, that the King may be put in chains or deposed, is a traitor; but whosoever says, that none but traitors would put the King in chains, or depose him, is an honest man; therefore apply *ad idem*, but do not let us make excursions.

Sidney. If they will produce the whole, my Lord, then I can see whether one part contradicts another.

L. C. J. Well, if you have any witnesses call them.

Sidney. The Earl of Anglesey.

L. C. J. Ay, in God's name, stay till tomorrow in things that are pertinent.

Sidney. I desire to know of my Lord Anglesey, what my Lord Howard said to him concerning the plot that was broken out.

Lord Anglesey. Concerning this plot you are now questioned for?

Sidney. The plot for which my Lord Russel and I was in prison.

Lord Anglesey. The question I am asked is, What my Lord Howard said before the trial of my Lord Russel, concerning the plot; I suppose, this goes as a branch of that he was accused for. I was then in the country, when the business was on foot, and used to come to town a day or two in the week, living near in Hertfordshire, and I understanding the affliction my Lord of Bedford was in, I went to give my Lord a visit, we having been acquaintance of above fifty years standing, and bred together in Maudlin College in Oxford. When I came to my Lord of Bedford, and had admistred that comfort that was fit for one Christian to give another in that distress, I was ready to leave him, and my Lord

Howard came in. It was upon the Friday before my Lord Howard was taken, he was taken (as I take it) upon Sunday or Monday, my L. Howard fell into the same Christian office that I had been just discharging, to compassionate my Lord's affliction, to use arguments to comfort and support him under it, and told him, he was not to be troubled, for he had a discreet, a wise, and a virtuous son, and he could not be in any such plot (I think that was the word he used at first, though he gave another name to it afterward) and his Lordship might therefore well expect a good issue of that business, and he might believe his son secure, for he believed he was neither guilty, nor so much as to be suspected. My Lord proceeded further, and did say, that he knew of no such barbarous design (I think he called it so in the second place) and could not charge my Lord Russel with it, nor any body else. This was the effect of what my Lord Howard said at that time, and I have nothing to say of my own knowledge more than this; but to observe that I was present when the jury did put my Lord Howard particularly to it; what have you to say to what my Lord Anglesey testifies against you? My Lord, I think, did in three several places give a short account of himself, and said it was very true, and gave them some further account why he said it, and said, he should be very glad it might have been advantageous to my Lord Russel.

Sidney. My Lord of Clare, I desire to know of my Lord of Clare, what my Lord Howard said concerning this plot and me.

Lord Clare. My Lord, a little after Colonel Sidney was taken, speaking of the times, he said, that if ever he was questioned again, he would never plead, the quickest dispatch was the best, he was sure they would have his life, though he was never so innocent, and discoursing of the late Primate of Armagh's prophecy; for my part, says he, I think the persecution is begun, and I believe

lieve it will be very sharp, but I hope it will be short, and I said, I hoped so too.

Att. Gen. What answer did your Lordship give to it?

L. Clare. I have told you what I know, my Lord is too full of discourse for me to answer all he says; but for Colonel Sidney, he did with great asseverations assert, that he was as innocent as any man breathing, and used great encomiums in his praise, and then he seemed to bemoan his misfortune, which I thought real; for never was any man more engaged to another, than he was to Colonel Sidney, I believe. Then I told, they talked of papers that were found, I am sure, says he, they can make nothing of any papers of his.

Att. Gen. When was this?

L. Clare. This was at my house the beginning of July.

Att. Gen. How long before my Lord Howard was taken?

L. Clare. About a week before.

Att. Gen. I would ask you, my Lord, upon your honour, would not any man have said as much, that had been in the plot?

L. Clare. I cannot tell, I know of no plot.

Sidney. Mr. Philip Howard.

Just. Withins. What do you ask him?

Sidney. What you heard my Lord Howard say concerning this pretended plot, or my being in it?

Phil. Howard. My Lord, when the plot first brake out, I used to meet my Lord Howard very often at my brother's house, and coming one day from Whitehall, he asked me, what news? I told him, my Lord, says I, there are abundance of people that have confessed the horrid design of murdering the King, and the Duke. How, says he, is such a thing possible? Says I, it is so, they have all confessed it. Says he, do you know any of their names? Yes, says I, I have heard their names. What

are their names? says he; why, says I, Col. Rumsey and Mr. West, and one Walcot and others, that are in the proclamation (I cannot tell whether Walcot was in hold) says he, it is impossible such a thing can be; says he, there are in all countries people that wish ill to the government, and, says he, I believe there are some here; but, says he, for any man of honour, interest or estate to go about it, is wholly impossible. Says I, my Lord, so it is, and I believe it. Says I, my Lord, do you know any of these people? No, says he, none of them; only one day, says he, passing through the Exchange, a man saluted me, with a blemish upon his eye, and embraced me, and wished me all happiness; says he, I could not call to mind who this man was; but afterwards I recollected myself that I met him at my Lord Shaftsbury's, and heard afterwards, and concluded his name to be — his at whose house the King was to be assassinated —

Att. Gen. Rumbold?

Mr. Howard. Ay Rumbold, my Lord, may I ask if my Lord Howard be here?

L. C. J. He is there behind you.

Mr. Howard. Then he will hear me. My Lord, says I, what does your Lordship think of this business? Says he, I am in a maze; says I, if you will be ruled by me, you have a good opportunity to address to the King, and all the discontented Lords as they are called; and to shew your detestation and abhorrence of this thing; for, says I, this will be a good means to reconcile all things. Says he, you have put one of the best notions in my head that ever was put. Says I, you are a very good penman, draw up the first address (and I believe I was the first that mentioned an address, you have had many an one since, God send them good success) says he, I am sorry my Lord of Essex is out of town, he should present it. But, says I, here is my Lord Russel, my Lord of Bedford, my Lord of Clare, all of you

you that are disaffected, and so accounted, go about this business, and make the nation happy, and King happy. Says he, will you stay till I come back? Ay, says I, if you will come in any time; but he never came back while I was there. The next day, I think, my Lord Russel was taken, and I came and found him at my brother's house again (for there he was day and night) says he cousin, what news? Says I, my Lord Russel is sent to the Tower. We are all undone then, says he. Pray, says he, go to my Lord Privy-seal, and see if you can find I am to be taken, up; says he, I doubt 'tis a sham plot, if it was a true plot, I should fear nothing; says I, what do you put me to go to my Lord Privy-seal for? He is one of the King's cabinet-council, do you think he will tell me? I won't go; but, says I, if you are not guilty, why would you have me go to inquire? Why, says he, because I fear 'tis not a true plot, but a plot made upon us, and therefore, says he, there is no man free. My Lord, I can say no more as to that time, (and there is no man that sits here, that wishes the King better than I do.) The next thing I come to, is this, I came the third day, and he was mighty sad and melancholy, that was when Col. Sidney was taken; says I, why are you melancholy, because Col. Sidney is taken? Says I, Col. Sidney was a man talked of before, why were you not troubled for my Lord Russel, that is of your blood? Says he, I have that particular obligation from Colonel Sidney, that no one man had from another. I have one thing to say farther, I pray I may be rightly understood in what I have said.

L. C. J. What, you would have us undertake for all the people that hear you? I think you have spoken very materially, and I will observe it by and by to the jury.

Col. Sidney. Pray call Dr. Burnet.

Just. Walcot. What do you ask Dr. Burnet?

Sidney. I have only to ask Dr. Burnet, whether after the news of this pretended plot, my Lord Howard came to him? And what he said to him?

Dr. Burnet. My Lord, the day after this plot brake out, my Lord Howard came to see me, and upon some discourse of the plot, with hands and eyes lifted up to heaven, he protested he knew nothing of any plot, and believed nothing of it, and said, that he looked upon it as a ridiculous thing.

My Lord Paget was sent for at the prisoner's request, being in the hall.

Sidney. My Lord, I desire Joseph Ducas may be called, (who appeared, being a Frenchman.)

Sidney. I desire to know, whether he was not in my house when my Lord Howard came thither, a little after I was made a prisoner, and what he said upon it?

Ducas. Yes, my Lord, my Lord Howard came the day after the Colonel Sidney was taken, and he asked me, where was the Colonel Sidney? And I said, he was taken by an order of the King; and he said, oh Lord! what is that for? I said, they have taken papers; he said, are some papers left? Yes. Have they taken something more? No, well you must take all the things out of the house, and carry them to some you can trust: I dare trust nobody, says he; I will lend my coach and coachman I said, if the Colonel Sidney will save his goods; he save them, if not, 'tis no matter. A little after the Lord Howard came in the house of Colonel Sidney, about eleven o'clock at night. When he was in, I told him, what is this? They talk of a plot to kill the King and the Duke, and I told him, they spake of one general insurrection; and I told him more, that I understood that Col. Sidney was sent into Scotland:

Scotland: When my Lord Howard understood that, he said, God knows, I know nothing of this, and I am sure if the Colonel Sidney was concerned in the matter, he would tell me something, but I know nothing. Well, my Lord, I told him, I believe you are not safe in this house, there is more danger here than in another place. Says he, I have been a prisoner, and I had rather do any thing in the world than be a prisoner again.

Then my Lord Paget came into the court.

Sidney. Pray, my Lord, be pleased to tell the court, if my Lord Howard has said any thing to you concerning this late pretended plot, or my being any party in it.

L. Paget. My Lord, I was subpoena'd to come hither; and did not know upon what account, I am obliged to say, my Lord Howard was with me presently after the breaking out of this plot, and before his appearing in that part which he now acts, he came to me; and I told him, that I was glad to see him abroad, and that he was not concerned in this disorder. He said, he had joy from several concerning it, and he took it as an injury to him, for that it looked as if he were guilty. He said, he knew nothing of himself, nor any body else. And though he was free in discourse, and free to go into any company indifferently; yet he said, he had not seen any body that could say any thing of him, or give him occasion to say thing of any body else.

Col. Sidney. Mr. Edward Howard.

Mr. Howard. Mr. Sidney, what have you to say to me?

Col. Sidney. My Lord, I desire you would ask Mr. Edw. Howard, the same thing, what discourse he had with my Lord Howard about this plot?

L. C. J. Mr. Howard, Mr. Sidney desires you to tell what discourse you had with my Lord Howard about this plot.

Mr. Howard. My Lord, I have been for some time very intimate with my Lord, not only upon the account of our alliance, but upon a strict intimacy and correspondence of friendship, and I think I was as much his as he could expect from that alliance. I did move him during this time, to serve the King upon the most honourable account I could, but that proved ineffectual: I pass that, and come to the business here. As soon as the plot brake out, my Lord having a great intimacy with me, expressed a great detestation and surprizing in himself to hear of it, wherein my Lord Howard assured me under very great asseverations, that he could neither accuse himself, nor no man living. He told me moreover, that there were certain persons of quality, whom he was very much concerned for, that they should be so much reflected upon or troubled; and he condoled very much their condition both before and after they were taken. My Lord, I believe in my conscience, he did this without any mental reservation, or equivocation, for he had no reason to do it with me. I add moreover, if I have any sense of my Lord's disposition, I think if he had known any such thing, he would not have stood his being taken, or made his application to the King in this manner, I am afraid not so suitable to his quality:

L. C. J. No reflections upon any body.

Mr. Howard. My Lord, I reflect upon nobody, I understand where I am, and have a respect for the place; but since your Lordship has given me this occasion, I must needs say, That that reproof that was accidentally given me at the trial of my Lord Russel, by reason of a weak memory, made me omit some particulars I will speak now,

box, which are these, and I think they are material: My Lord, upon the discourse of this plot, did further assure me, that it was certainly a sham, even to his knowledge; how, my Lord, says I, do you mean a sham? Why, says he, such an one, cousin, as is too black for any minister of public employment to have devised, but, says he, it was forged by people in the dark, such as Jesuits and Papists, and, says he, this is my conscience; says I, my Lord, if you are sure of this thing, then pray, my Lord, do that honourable thing that becomes your quality, that is, give the King satisfaction as becomes you; pray make an address under your hand to the King, whereby you express your detestation and abhorrence of this thing; says he, I thank you for your counsel; to what minister, says he, shall I apply myself? I pitched upon my Lord Halifax, and I told him of my Lord's desire, and I remember my Lord Howard named the Duke of Monmouth, my Lord of Bedford, the Earl of Clare, and he said he was sure they would do it; that he was sure of their innocence, and would be glad of the occasion: And I went to my Lord Halifax, and told him that my Lord was willing to set it under his hand, his detestation of this plot, and that there was no such thing to his knowledge. My Lord Halifax very worthily received me; says he, I will introduce it; but my Lord Russell being taken, this was laid aside, and my Lord gave this reason. For, says he, there will be so many people taken, they will be hindered. I must needs add from my conscience, and from my heart before God and man, that if my Lord had spoken before the King, sitting upon his throne, abating for the solemnity of the presence, I could not have more believed him, from that assurance he had in me. And I am sure from what I have said, if I had the honour to be of this gentleman's jury, I would not believe him.

L. C. J. That must not be suffered.

Att. Gen. You ought to be bound to your good behaviour for that.

L. C. J. The jury are bound by their oaths to go according to their evidence, they are not to go by men's conjectures.

Mr. Howard. May I go, my Lord?

Att. Gen. My Lord Howard desires he may stay, we shall make use of him.

Sidney. My Lord, I spake of a mortgage that I had of my Lord Howard, I don't know whether it is needful to be proved; but it is so.

L. Howard. I confess it.

Sidney. Then, my Lord, here is the other point, He is under the fear, that he dare not but say what he thinks will conduce towards the gaining his pardon; and that he hath expressed, that he could not have his pardon, but he must first do this drudgery of swearing. I need not say, that his son should say, that he was sorry his father could not get his pardon, unless he did swear against some others.

Sidney. Call Mr. Blake. (Who appeared.) My Lord, I desire he may be asked, whether my Lord Howard did not tell him that he could not get his pardon yet, and he could ascribe it to nothing, but that the drudgery of swearing must be over first.

Then my Lord Chief Justice asked the question.

Mr. Blake. My Lord, I am very sorry I should be called to give a public account of a private conversation, how it comes about I don't know. My Lord sent for me about six weeks ago, to come and see him. I went, and we talked of news, I told him I heard nobody had their pardon, but he that first discovered the plot; he told me, no; but he had his warrant for it; and, says he, I have their word and honour for it, but, says he, I will do nothing in it till I have further order, and, says he, I hear nothing of it, and I can ascribe it to no other reason, but I must not have my pardon till the

the drudgery of swearing is over. These words my Lord said, I believe my Lord won't deny it.

Then Colonel Sidney called Mr. Hunt and Burroughs, but they did not appear.

Sidney. 'Tis a hard case they don't appear, one of them was to prove that my Lord Howard said he could not have his pardon till he had done some other jobs.

L. C. J. I can't help it, if you had come for assistance from the court, I would willingly have done what I could.

Then Col. Sidney mentioned the Duke of Buckingham, but he was informed he was not subpoena'd.

Sidney. Call Grace Tracy and Elizabeth Penwick. (Who appeared.) I ask you only, what my Lord Howard said to you at my house concerning the plot, and my being in it?

Tracy. Sir, he said that he knew nothing of a plot he protested, and he was sure Col. Sidney knew nothing of it. And he said, if you knew any thing of it, he must needs know of it, for he knew as much of your concerns as any one in the world.

Sidney. Did he take God to witness upon it?

Tracy. Yes.

Sidney. Did he desire my plate at my house?

Tracy. I can't tell that, he said the goods might be sent to his house.

Sidney. Penwick, What did my Lord Howard say in your hearing concerning the pretended plot, or my plate carrying away?

Penwick. When he came, he asked for your honour; and they said your honour was taken away by a man to the Tower for the plot, and then he took God to witness he knew nothing of it, and believed your honour did not neither. He said, he was in the Tower two years ago, and your honour, he believed, saved his life.

Sidney. Did he desire the plate?

Penwick. Yes, and said it should be sent to his house to be secured. He said it was only malice.

Mr. Wharton stood up.

Wharton. 'Tis only this I have to say; That if your Lordship pleases to shew me any of these sheets of paper, I will undertake to imitate them in a little time that you shan't know which is which. 'Tis the easiest hand that ever I saw in my life.

Att. Gen. You did not write these, Mr. Wharton?

Wharton. No; but I will do this in a very little time, if you please.

L. C. J. Have you any more witnesses?

Sidney. No, my Lord.

L. C. J. Then apply yourself to the jury.

Sidney. Then this is that I have to say. Here is a huge complication of crimes laid to my charge: I did not know at first under what statute they were, now I find 'tis the statute of 25 of Edw. 3. This statute hath two branches; one relating to war, the other to the person of the King. That relating to the person of the King, makes the conspiring, imagining, and compassing his death, criminal. That concerning war is not, unless it be levied: Now, my Lord, I cannot imagine to which of these they refer my crime, and I did desire your Lordship to explain it. For to say that a man did meet to conspire the King's death, and he that gives you the account of the business does not speak one word of it, seems extravagant; for conspiracies have ever their denomination from that point to which they tend; as a conspiracy to make false coin infers instruments and the like. A conspiracy to take away a woman, to kill, or rob, are all directed to that end. So conspiring to kill the King, must immediately aim at killing the

the King. The King hath two capacities, natural and politic, that which is the politic can't be within the statute, in that sense he never dies, and 'tis absurd to say it should be a fault to kill the King that can't die: So then it must be the natural sense it must be understood in, which must be done by sword, by pistol, or any other way. Now if there be not one word of this, then that is utterly at an end, though the witness had been good. The next point is concerning levying of war. Levying of war is made treason there, so it be proved by overt-act, but an overt-act of that never was, or can be pretended here. If the war be not levied, 'tis not within the act; for conspiring to levy war is not in the act. My Lord, there is no man that thinks that I would kill the King that knows me, I am not a man to have such a design, perhaps I may say I have saved his life once. So that it must be by implication; that is, it is first imagined, that I intended to raise a war, and then 'tis imagined that war should tend to the destruction of the King. Now I know that may follow, but that is not natural or necessary, and being not natural or necessary, it can't be so understood by the law. That it is not is plain, for many wars have been made, and the death of the King has not followed. David made war upon Saul, yet nobody will say he sought his death, he had him under his power and did not kill him, David made war upon Ishboeth, yet did not design his death; and so in England and France Kings have been taken prisoners, but they did not kill them. King Stephen was taken prisoner, but they did not kill him. So that 'tis two distinct things, to make war and to endeavour to kill the King. Now as there is no manner of pretence that I should endeavour to kill the King directly, so it can't be by inference, because 'tis treason under another species. I confess I am not fit to argue these points, I think I ought to have coun-

sel, but if you won't allow it me, I can't help it; but these things are impossible to be jumbled up together. Now I say this, If I am not under the first branch, if not directly, I can't be by implication; though I did make war, I can't be said to conspire the death of the King, because 'tis a distinct species of treason, and my Lord Coke says, 'Tis the overthrow of all justice to confound *Membra dividenda*; now if the making of war can't be understood to be a conspiring the death of the King, then I am not guilty of this indictment, but here, my Lord, is neither conspiring the death of the King, nor making war, nor conspiring to make war. Besides, I say, 'tis not the best man's evidence here would be good in this case, because the law requires two. The next thing is the business of Aaron Smith, which my Lord tells so imperfectly, and so merely conjectural, that there is nothing in it, but his rhetoric in setting it out. He tells you of a letter sent with him, but he does not tell you by whom writ, what was in it, or whether it was delivered or no: So that I think we may lay that aside as the other, as things nothing in them at all. Then says Mr. Attorney, these Scotch gentlemen are come to town, I profess I never heard the names of one of them till he named them to me in the Tower. I have not sent myself, nor writ a letter into Scotland never since the year 59, nor do I know one man in Scotland to whom I can write, or from whom I ever received one. I returned into England in the year 77, and since that time have not writ nor received a letter from Scotland. Then some gentleman came hither, what is that to me? I never saw one of the Cambells in my life, nor Monro; if any one can prove I have had communication with them, I will be glad to suffer. Then here are papers; if any thing is to be made of them, you must produce the whole, for 'tis impossible to make any thing of a part of them. You ask me, what

what other passage I would have read, I don't know a passage in them, I can't tell whether it be good or bad. But if there are any papers found ('tis a great doubt whether they were found in my study or no, or whether they be not counterfeit; but though that be admitted that they were found in my house) the hand is such, that it shews they have been writ very many years. Then that which seems to be an account of the sections and chapters, that is but a scrap, and what if any body had, my Lord, either in my own hand or another's, found papers, that are not well justifiable, is this treason? Does this imagine the death of the King? Does this reach the life of the King? If any man can say I ever printed a sheet in my life, I will submit to any punishment. Many others, my Lord, they write, and they write what comes into their heads. I believe there is a brother of mine here has forty quires of paper written by my father, and never one sheet of them was published, but he writ his own mind to see what he could think of it another time, and blot it out again, may be. And I myself, I believe, have burned more papers of my own writing than a horse can carry. So that for these papers I can't answer for them. There is nothing in it, and what concatenation can this have with the other design that is in itself nothing, with my Lord's select council selected by nobody to pursue the design of my Lord Shaftsbury? And this council that he pretends to be set up for so great a business, was to be adjusted with so much fineness so as to bring things together, What was this fineness to do? (taking it for granted, which I don't) This was nothing (if he was a credible witness) but a few men talking at large of what might be or not be, what was like to fall out without any manner of intention or doing any thing. They did not so much as inquire. Where there were men in the country, arms, or

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ammunition. A war to be made by five or six men, not knowing one another, not trusting one another. What said Dr. Cox in his evidence at my Lord Russel's trial; of my Lord Russel's trusting my Lord Howard? He might say the same of some others. So that, my Lord, I say, these papers have no manner of coherence, no dependance upon any such design. You must go upon conjecture; and after all, you find nothing but only papers, never perfect, only scraps, written many years ago, and that could not be calculated for the raising of the people. Now, pray what imagination can be more vain than that? And what man can be safe, if the King's counsel may make such (whimsical I won't say, but) groundless constructions? Mr. Attorney says, the plot was broken to the Scots (God knows we were neither broken nor joined) and that the Campbells came to town about that time I was taken, and in the mean time my Lord Howard, the great contriver of all this plot, who was most active; and advised the business that consisted of so much fineness; he goes there and agrees of nothing; and then goes into Essex upon great important business, greater than the war of England and Scotland, to what purpose? To look after a little pimping Manor, and what then? Why then it must be laid aside, and he must be idle five weeks at the Bath, and there is no inquiring after it. Now, I desire your Lordship to consider, whether there be a possibility for any men, that have the sense of porters and grooms; to do such things as he would put upon us. I would only say this, if Mr. Attorney be in the right, there was a combination with the Scots, and then this paper was writ; for those that say I did it, say I was doing it then, and by the notes, there is work enough for four or five years, to make out what is mentioned in those scraps of paper, and this must be to kill the King. And I say this,

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my Lord, that, under favour, for all constructive treasons you are to make none, but to go according to plain proof, and that these constructive treasons belong only to Parliament, and by the immediate proviso in that act. Now, my Lord, I leave it to your Lordship, to see whether there is in this any thing that you can say is an overt-act of treason mentioned in 25 Edw. 3. If it be not plainly under one of the two branches, that I have endeavoured to kill the King, or levied war, then 'tis matter of construction, and that belongs to no court but the Parliament. Then, my Lord, this hath been adjudged already in Throgmorton's case. There are twenty judgements of Parliament, the act of 13 Eliz. that says — I should have somebody to speak for me, my Lord.

L. C. J. We are of another opinion.

Just. Wilbins. If you acknowledge the matter of fact, you say well.

Sidney. I say there are several judgements of Parliament, that do shew whatever is constructive treason does not belong to any private court, that of 1 Mary, 1 Edw. 6. 1 Eliz. 5 Eliz. 18. another 13 Car. shews this. Now, my Lord, I say that the business concerning the papers, 'tis only a similitude of hands, which is just nothing. In my Lady Carr's case, it was resolved to extend to no criminal cause, if not to any, then not to the greatest, the most capital. So that I have only this to say, that I think 'tis impossible for the jury to find this matter, for the first point you proved by my Lord Howard, that I think is nobody, and the last concerning the papers, is only imagination from the similitude of hands. If I had published it, I must have answered for it, or if the thing had been whole and mine, I must have answered for it; but for these scraps never shewed any body, that I think does not all concern me. And I say, if the jury should find it (which is impossible they can) I desire to have the law re-

served unto me.

Sol. Gen. My Lord, and you Gentlemen of the Jury. The evidence hath been long; but I will endeavour to repeat it as faithfully as I can. The crime the prisoner stands accused for, is compassing and imagining the death of the King. That which we go about to prove, That compassing and imagining by, is by his meeting and consulting how to raise arms against the King, and by plain matter in writing under his own hand, where he does affirm, it is lawful to take away and destroy the King. I will begin with his meeting and consultation to raise arms against the King. The prisoner, gentlemen, hath endeavoured to avoid the whole force of this evidence, by saying, that this in point of law can't affect him, if it were all proved; for this does not amount to a proof of his compassing and imagining the death of the King, and he is very long in interpreting the act of Parliament to you of 25 Edw. 3. and dividing of it into several members or branches of treason, and does insist upon it, that though this should be an offence within one branch of that statute, yet that is not a proof of the other, which is the branch he is proceeded upon, that is the first clause against the compassing and imagining the death of the King. And, says he, conspiring to levy war, is not so much as one branch of that statute, but it must be war actually levied. This is a matter he is wholly mistaken in, in point of law. It hath been adjudged over and over again, That an act which is in one branch of that statute, may be an overt-act to prove a man guilty of another branch of it. A levying war is an overt-act to prove a man guilty of conspiring the death of the King. And this was adjudged in the case of Sir Henry Vane, so is meeting and consulting to raise arms. And reason does plainly speak it to be so; for they that conspire to raise war against the King, can't be presumed to stop

stop any where; till they have dethroned or murdered the King. Gentlemen, I won't be long in citing authorities, it hath been settled lately by all the Judges of England, in the case of my Lord Russel, who hath suffered for this conspiracy. Therefore that point of law will be very plain against the prisoner. He hath mentioned some other things, as that there must be two witnesses to every particular fact, and one witness to one fact, and another to another, is not sufficient; it hath been very often objected, and as often over-ruled: It was over-ruled solemnly in the case of my Lord Stafford. Therefore if we have one witness to one overt-act, and another to another, they will be two witnesses in law to convict this prisoner. In the first part of our evidence, we give you an account of the general design of an insurrection that was to have been, that this was contrived first, when my Lord Shaftsbury was in England, that after my Lord Shaftsbury was gone, the business did not fall; but they thought fit to revive it again, and that they might carry it on the more steadily, they did contrive a council among themselves of six, whereof the prisoner at the bar was one. They were the Duke of Monmouth, my Lord of Essex, my Lord Howard, my Lord Russel, the prisoner at the bar, and Mr. Hambden. This council they contrived to manage this affair, and to carry on that design, that seemed to fall by the death of my Lord of Shaftsbury, and they met; this we give you an account of, first by witnesses, that gave you an account in general of it. And though they were not privy to it, yet they heard of this council, and that Colonel Sidney was to be one of this council. This, gentlemen, if it had stood alone by itself, had been nothing to affect the prisoner at all. But this will shew you, that it was discoursed among them that were in this conspiracy. Then my Lord Howard

gives you an account, that first the Duke of Monmouth, and he, and Colonel Sidney met, and it was agreed to be necessary to have a council, that should consist of six or seven, and they were to carry it on. That the Duke of Monmouth undertook to dispose my Lord Russel to it, and Colonel Sidney to dispose the Earl of Essex, and Mr. Hambden; that these gentlemen did meet accordingly, and the substance of their discourse was, taking notice how the design had fallen upon the death of my Lord Shaftsbury, that it was fit to carry it on before men's inclinations were cool, for they found they were ready to it, and had great reason to believe it, because this being a business communicated to so many, yet for all that it was kept very secret, and no body had made any mention of it, which they looked upon as a certain argument that men were ready to engage in it. This encouraged them to go on in this conspiracy. Then when the six met at Mr. Hambden's house, they debated concerning the place of rising, and the time, the time they conceived must be suddenly, before men's minds were cool, for now they thought they were ready and very much disposed to it, and for place, they had in debate, whether they should rise first in the town, or in the country, or both together. And for the persons, they thought it absolutely necessary for them to have the united counsels of Scotland to join with them, and therefore they did refer this matter to be better considered of another time, and they met afterward's at my Lord Russel's house in February, and there they had discourse to the same purpose. But there they began to consider with themselves, being they were to destroy this government, what they should set up in the room of it; to what purpose they engaged. For they did very wisely consider, if this be only to serve a turn, and to make one man great, this will be a great hinderance in their affair, therefore

therefore they thought it was necessary to Engage upon a public account, and to resolve all into the authority of a Parliament, which surely they either thought to force the King to call, or otherwise that the people might call a Parliament, if the King refused; and so they to choof: their own heads. But still they were upon this point, that it was necessary for their friends in Scotland to have their councils united with them, and in order to that, it was necessary to contrive some way to send a messenger into Scotland, to bring some men here to treat and consult about it, and Col. Sidney is the man that does engage to send this messenger, and he had a man very fit for his turn, that is, Aaron Smith, whom he could confide in, and him he underlook to send into Scotland. This messenger was to fetch my Lord Melvin, the two Campbell's, and Sir John Cockram; Colonel Sidney as he engaged to do this, so afterwards he did shew to my Lord Howard money, which he affirmed was for that business; he says it was a sum of about sixty guineas, and he believes he gave it him, for that Colonel Sidney told him, Aaron Smith was gone into Scotland, that the pretence was not bare-faced to invite them over, to consult of a rebellion, but to consult about the business of Carolina; being a plantation for the persecuted brethren, as they pretended in Scotland. Gentlemen, these Scotchmen that were thus sent for over, they came accordingly, that is, the two Campbells, and Sir John Cockram, and the discourse with Sir Andrew Foster was according to this cant that was agreed on beforehand, concerning a plantation in Carolina. This was that that was pretended for their coming hither; but the true errand was, the business of the insurrection intended. Gentlemen, that they came upon such a design, is evident from the circumstances; they came about the time the business brake out, and in that

time suspiciously changing their lodging, they were taken making their escape, and this at a time before it was probable to be known abroad that these men were named as part of the conspirators. These things do very much verify the evidence my Lord Howard hath given, and there is nothing has been said, does at all invalidate it. The sending of Aaron Smith into Scotland, and his going, and the coming of these men, and their endeavouring to make their escape, are mighty concurrent evidences with the whole evidence my Lord Howard has given. Now, what objections are made against this evidence? Truly none at all. Here are persons of great quality have given their testimony, and they do not impeach my Lord Howard in the least; but some do extremely confirm the truth of my Lord Howard. My Lord Anglesey gives you an account of a discourse at my Lord of Bedford's, that my Lord Howard came in, and that my Lord Howard should there comfort my Lord of Bedford, and enlarge in the commendations of his son, and say he was confident he knew nothing of the design, and he must be innocent. Gentlemen, this is the nature of the most part of the evidence. My Lord of Clare, his evidence is much the like, that is, his denying that he knew of any plot. Now here is my Lord Howard under a guilt of high treason; for he was one of those conspirators not yet discovered, nor no evidence of any discourse leading to any thing that should give him occasion to him to protest his innocency: And, says he, I know nothing of the plot. You would have wondered if he should have been talking in all places his knowledge, and declaring himself: His denying of it under the guilt, when he was not accused, is nothing to his confession when he comes to be apprehended and taken for it. Here Mr. Philip Howard says, he had several discourses with him about this business, upon the breaking out of the plot, and

and that he advised him to make an address, and that this was a thing that would be very acceptable, and very much for their vindication; and my Lord Howard (he says) thanked him for his very good advice; and said, he would follow it: And presently after, when my Lord Russel was apprehended, Mr. Howard tells him the news, that my Lord Russel was apprehended; this was sudden to him. And what, says he? We are all undone. When my Lord Russel that was one of this council, that was a secret council, and could not be traced but by some of themselves, when he is apprehended, then he falls out into this expression, "We are all undone." This is an argument my Lord Howard had a guilt upon him. For, why were they all undone, that my Lord Russel was apprehended, any more than upon the apprehending the rest? Yes, because my Lord was one of the six, and now it was come to the knowing of that part of the conspiracy. It was traced to the council of six, which in all likelihood would break the neck of the design. Now though he put it off afterwards, saying, "I believe it is a sham plot," yet this was but a trivial put off. And then, when Colonel Sidney is taken, the same witness, Mr. Howard tells you, my Lord was very sad and melancholy; for then he had greater reason to lie under an apprehension of being detected. Therefore, gentlemen, this will rather confirm the truth of the evidence, than any way impeach it. Then (for I would repeat it all, though I think it had no great weight in it) Doctor Burnet says, that after the plot, my Lord Howard pretended he knew of no plot. This is no more than was testified by the other Lords before; and all it imports, is, that my Lord did not discover himself to Dr. Burnet. But I would fain know, if my Lord had told Dr. Burnet, had it not argued that he had great confidence in him, that he thought him a man

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fit to be entrusted with such a secret? And unless the Doctor desires to be thought such a man, himself must own it is no objection, that my Lord Howard did not tell him. Ducas's testimony is no more neither, that he protested he was innocent, and believed Colonel Sidney was innocent; and this was before my Lord Howard discovered any thing of this plot. Then Colonel Sidney objects, this is by malice, my Lord Howard owes him money, and seeks to pay his debts by taking away his life; and in further prosecution of this malice, would have seized upon his goods. But the evidence does not receive such construction, for my Lord Howard only offered Colonel Sidney the civility of his house to protect his plate and goods. Now, gentlemen, there were two other witnesses, my Lord Paget, and Mr. Edward Howard; but they say no more than the rest of them, that he did protest his innocency, and Mr. Howard says, he advised him to make an address to the King. This, gentlemen, I repeat, not that it is material, but for no other reason, than because Colonel Sidney had produced it; and so we are to think, he intended to make some use of it; but I cannot see any inference to be drawn from it. There is one witness more, and that is Mr. Blake, to the credit of my Lord Howard, who comes here, and says, that when he discoursed about a pardon, my Lord should say, that he had a warrant for his pardon, but that he had not yet passed it, and could not yet; and he apprehended the reason was, because the drudgery of swearing was not over. But this is but what my Lord Howard had conjectured: First, It does not appear, that there is any promise of pardon at all to my Lord Howard, on any terms imposed on him. In the next place, Whatever expectation he has of a pardon, he cannot reasonably hope for it without making a clear discovery of all he knows: For to stifle the evidence he has

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given, is not the way to deserve a pardon of his Prince. Therefore, gentlemen, what ever expressions were used, though he called it the drudgery of swearing, however unwilling he is to come to it, and though he gives it very many hard names, and might think it very harsh to come and own himself to be one of the conspirators, it might be irksome, and very irksome; yet none of them tell you, that my Lord Howard should say, that what he had said was not true. Now he has come and given his evidence, and you have heard all these objections against it, and not one of them touch it in the least.

I come in the next place to the other part of the evidence, the papers found in Colonel Sidney's house: And in the first place he objects, they cannot affect him; for, says he, there is no proof they were found in my house, no proof they were written by me; for comparison of hands, that is nothing; and if they were proved to be mine, it is nothing at all to the purpose: they are an answer to a polemical discourse, wherewith he entertained himself privately in his study. Why, you have observed, I know, that Sir Philip Lloyd in the first place swears, that by warrant from the Secretary he searched his house, and he found the papers lying upon Colonel Sidney's table in his study, when he came in there; and there is no ground nor colour for you to suspect otherwise than that they were there, and he found them there. For the surmise of the prisoner at the bar, that they might be laid there, it is so foreign and without ground, that by and by you will think there is nothing at all in it. In the next place, we prove Colonel Sidney's hand, and that by as much proof as the thing is capable of; such a proof as in all cases hath been allowed; and that is, for men to come that know and are acquainted with the hand-writing, and swear they know his hand-writing, and they believe

this to be his hand. You have heard from Mr. Sheppard, a man that used to transact business for him, pay money for him; and Mr. Cooke and Mr. Cary, men of known credit in the city of London, that have had the like dealings with Col. Sidney, and they swear this is his hand-writing, as they verily believe. So that, gentlemen, this proof to you of Colonel Sidney's hand-writing does verify Sir Philip Lloyd, that these papers must be found there, if Colonel Sidney writ them; and then this being found that they were writ by him, the next thing will be, how far this will be an evidence to prove his compassing and imagining the death of the King. Compassing and imagining the death of the King, is the act of the mind, and is treason whilst it remains secret in the heart, though no such treason can be punished, because there is no way to prove it; but when once there is any overt act, that is, any thing that does manifest and declare such intention, then the law takes hold of it, and punishes it as high treason.

Now after this evidence, I think no man will doubt, whether it was in the heart of the prisoner at the bar to destroy the King. But first he objects, that this is a part of a book, and unless you take the whole, nothing can be made of it; as it is in wresting of texts of scripture, says he, you may as well say, that David says there is no God, because David hath said, "The fool hath said in his heart, there is no God." But, gentlemen, the application will not hold; for you see a long discourse hath been read to you, a continued thread of argument; it is not one proposition, but a whole series of argument: These are the positions, "That the King derives all his power from the people; that it is originally in the people, and that the measure of subjection must be adjudged by the Parliament; and if the King does fall from doing his duty, he must expect the people will exact it." And this he

he has laid down as no way prejudicial to him; for, says he, the King may refuse the crown, if he does not like it upon these terms. But, says he, if he does accept it, he must expect the performance will be exacted, or revenge taken by those he hath betrayed. Then next, he sets up an objection, and then argues against it: Ay, but shall the people be judge in their own cause? And thus he answers it, It must be so; for is not the King a judge in his own cause? How can any man else be tried, or convicted of any offence, if the King may not be judge in his own cause; for to a judge by a man's self, or by his deputy, is the same thing; and so a crime against the King cannot be punished? And then he takes notice of it as a very absurd position, "That the King shall judge in his own cause, and not the people." That would be to say, the servant entertained by the master shall judge the master, but the master shall not judge the servant. Gentlemen, after this sort of argument he comes to this settled position, "We may therefore, (says he) change or take away Kings, (without breaking any yoke, or that is made a yoke;) the injury is therefore in imposing the yoke, and there can be none at all in breaking of it." But he goes on in his book, and that is by way of answer to an objection, that if there be no injury, yet there may be inconvenience, if the headless multitude should shake off the yoke. But, says he, I would fain know how the multitude comes to be headless; and there he gives you many instances in story, and from foreign nations he comes home to the English, and tells you how all rebellions in later ages have been headed; and tells you the Parliament is the head, or the nobility and gentry that compose it; and when the King fails in his duty, the people may call it. The multitude therefore is never headless, but they either find or create an head, so that here is a plain and avowed principle

of rebellion established upon the strongest reason he has to back it. Gentlemen, this, with the other evidence that has been given, will be sufficient to prove his compassing the death of the King. You see the affirmations he makes; when Kings do break their trust they may be called to account by the people. This is the doctrine he broaches and argues for: He says in his book in another part, that the calling and dissolving of Parliaments is not in the King's power. Gentlemen, you all know how many Parliaments the King hath called and dissolved; if it be not in his power, he hath done that that was not in his power, and so contrary to his trust. Gentlemen, at the entrance into this conspiracy, they were under an apprehension that their liberties were invaded, as you hear in the evidence from my Lord Howard, that they were just making the insurrection upon that tumultuous opposition of electing of sheriffs in London. They enter into a consultation to raise arms against the King; and it is proved by my Lord Howard, that the prisoner at the bar was one. Gentlemen, words spoken upon a supposition will be high treason, as was held in King James's time, in the case of Collins in Roll's Reports, "The King being excommunicate, may be deposed and murdered," without affirming he was excommunicated; and this was enough to convict him of high treason. Now according to that case, to say the King having broke his trust may be deposed by his people, would be high treason, but here he does as good as affirm the King had broke his trust. When every one sees the King hath dissolved Parliaments; this reduces it to an affirmation. And tho' this book be not brought to that council to be perused, and there debated, yet it will be another, and more than two witnesses against the prisoner; for I would ask any man, suppose a man was in a room, and there were two men, and he talks with both apart, and

And he comes to one and endeavours to persuade him that it is lawful to rise in arms against the King, if so be he break his trust; and he should go to another man, and tell him the King hath broken his trust, and we must seek some way to redress ourselves, and persuade the people to rise; these two witnesses do so tack this treason together, that they will be two witnesses to prove him guilty of high treason. And you have heard one witness prove it positively to you, that he consulted to rise in arms against the King, and here is his own book says, it is lawful for a man to rise in arms against the King, if he break his trust, and in effect he hath said, the King hath broken his trust: Therefore this will be a sufficient demonstration what the imagination of the heart of this man was, that it was nothing but the destruction of the King and the government, and indeed of all governments. There can be no such thing as government if the people shall be judge in the case: For what so uncertain as the heady and giddy multitude? Gentlemen, I think this will be a sufficient evidence of his consulting the death of the King. You have here the prisoner at the bar that is very deep in it. Indeed some men may by passion be transported into such an offence, and tho' the offence be never the less, whatever the motives are, yet in some it is less dangerous, for those that venture upon passion to raise commotions and rebellion, are not always so much upon their guard, but that they may make some false steps to intrap themselves. But this gentleman proceeds upon a surer foundation, it is his reason, it is his principle, it is the guide of all his actions, it is that by which he leads and directs the steady course of his life. A man convinced of these principles, and that walks accordingly, what will not he do to accomplish his designs? how wary will he be in all his actions? Still reasoning with himself, which way to bring it most securely about. Gentle-

men, this is the more dangerous conspiracy in this man, by how much the more it is rooted in him; and how deep it is, you hear, when a man shall write as his principle, that it is lawful for to depose Kings, they breaking their trust, and that the revolt of the whole nation cannot be called rebellion. It will be a very sad case when people act this according to their consciences, and do all this for the good of the people, as they would have it thought; but this is the principle of this man. Gentlemen, we think we have plainly made it out to you, and prove it sufficiently, that it was the imagination of his heart to destroy the King, and made sufficient proof of high-treason.

Sidney. Give me leave, my Lord, to say a very few words. I desire Mr. Solicitor would not think it his duty to take away men's lives any how: First, we have had a long story. —

L. C. J. Nay, Mr. Sidney, we must not have vying and revying, I asked you before what you had to say; the course of evidence is, after the King's counsel have concluded, we never admit the prisoner to say any thing.

Sidney. My Lord, it was a wise man said, there never could be too much delay in the life of a man: I know the King's counsel may conclude, if they please. Mr. Solicitor, I would not have him think that it is enough by one way or another to bring a man to death: My Lord, this matter of Sir Henry Vane is utterly misrepresented. —

L. C. J. I must tell you, gentlemen of the jury, that what the prisoner says that is not proved, and what the King's counsel have said, of which there is no proof to make it out, must not be taken into any consideration.

Sidney. Then, my Lord, here is a place or two in Old Hales, (turning over my Lord Hales book) for the overt act of one treason, not being an overt act of another, your Lordship knows Coke and Hales were both

both against it. (He reads.) Compassing by bare words is not an overt act, conspiring to levy war is no overt act.

Sol. Gen. I desire but one word more for my own sake as well as the prisoner's, and that is, that if I have said any thing that is not law, or misrepeated, or misapplied the evidence which hath been given, I do make it my humble request to your Lordship to rectify those mistakes as well in point of fact as point of law; for God forbid the prisoner should suffer by any mistake.

L. C. J. Gentlemen, the evidence has been long, and it is a cause of great concernment, and it is far from the thoughts of the King, or from the thoughts, or desire of any of his judges here to be instrumental to take away the life of any man; that by law his life ought not to be taken away. For I had rather many guilty men should escape, than one innocent man suffer. The question is, whether upon all the evidence you have heard against the prisoner, and the evidence on his behalf, there is evidence sufficient to convict the prisoner of the high-treason he stands charged with. And as you must not be moved by the denial of the prisoner further than as it is backed with proof; so you are not to be inveigled by any insinuations made against the prisoner at the bar, further or otherwise than as the proof is made out to you. But it is usual, and it is a duty incumbent on the King's counsel, to urge against all such criminals, whatsoever they observe in the evidence against them, and likewise to endeavour to give answers to the objections that are made on their behalf. And, therefore, since we have been kept so long in this cause, it won't be amiss for me (and my brothers, as they shall think fit) to help your memory in the fact, and discharge that duty that is incumbent upon the court as to the points of law. — This indictment is for high-treason, and is grounded upon the statute of 25 Edw. 3. By which statute, the compassing and ima-

gining the death of the King, and declaring the same by an overt act is made high-treason. The reason of that law was, because at common law there was great doubt what was treason; wherefore to reduce that high crime to a certainty was that law made, that those that were guilty might know what to expect. And there are several Acts of Parliament made between the time of Edward III. and that of 1 M. but by that statute all treasons that are not enumerated by After-Acts of Parliament remain as they were declared by that statute of 25 Edw. 3. — And so are challenges and other matters, insisted upon by the prisoner, left as they were at the time of that Act: I am also to tell you that in point of law, it is not only the opinion of us here, but the opinion of them that sat before us, and the opinion of all the judges of England, and within the memory of many of you, that though there be two witnesses required to prove a man guilty of high-treason; yet it is not necessary there should be two witnesses to the same thing at one time. But if two witnesses prove two several facts, that have a tendency to the same treason, they are two witnesses sufficient to convict any man of high-treason. In the case of my Lord Stafford in Parliament, all the judges assisting, it is notoriously known, that one witness to a conspiracy in England, and another to a conspiracy in France, were held two witnesses sufficient to convict him of high-treason. In the next place, I am to tell you, that though some judges have been of opinion that words of themselves were not an overt act; but my Lord Hales, nor my Lord Coke, nor any other of the sages of the law, ever questioned but that a letter would be an overt act, sufficient to prove a man guilty high-treason; for *scribere est agere*, Mr. Sidney says, the King is a politic person; but you must destroy him in his natural capacity, or it is not treason; but I must tell you, if any man compass to imprison the

King, it is high-treason; so was the case of my Lord Cobham. And my Lord Coke, when he says, if a man do attempt to make the King do any thing force and compulsion, otherwise than he ought to do, that it is high-treason within that act of 25 Eliz. 3. But if it were an indictment only for the levying of war, there must be an actual war levied; but this is an indictment for compassing the death of the King; and the other treason, mentioned in that act of Parliament for the levying war, may be given in evidence to prove the conspiracy of the King's death: For it is rightly told you by the King's counsel, that the imagination of a man's heart is not to be discerned; but if I declare such my imagination by an overt act, which overt act does naturally evince, that the King must be deposed, destroyed, imprisoned, or the like, it will be sufficient evidence of treason within that act. In the next place, having told you what the law is, for, gentlemen, it is our duty upon our oaths, to declare the law to you, and you are bound to receive our declaration of the law, and upon this declaration, to inquire whether there be a fact, sufficiently proved, to find the prisoner guilty of the high-treason of which he stands indicted: And for that, I must tell you, whatever happens to be hear-say from others, it is not to be applied immediately to the prisoner; but however those matters that are remote at first may serve for this purpose, to prove there was generally a conspiracy to destroy the King and government: And for that matter, you all remember it was the constant rule and method observed about the Popish plot, first to produce the evidence of the plot in general: This was done in that famous case of my Lord Stafford in Parliament. Gentlemen, I am also to tell you, this alone does not at all affect the prisoner at the bar, but is made use of as a circumstance to support the credibility of the witnesses; and is thus far applicable to the bu-

siness before you, that it is plain, by persons that do not touch the prisoner at the bar, (and I am sorry any man makes a doubt of it at this time of day) that there was a conspiracy to kill the King; for after so full a proof in this place, and in others, and the execution and confession of several of the offenders, I am surprized to observe that the prisoner at the bar, and some others present, seem not to believe it.

But, gentlemen, you hear the first witness; I speak of West: He tells you he had the honour to be acquainted with Mr. Sidney, and that he had discourse with Walcot, a person convicted and executed for this horrid conspiracy. Why, says he, he told me at my chamber, that they were not the only persons concerned, but that there were other persons of great quality that had their meetings for the carrying on the business in other places. And Ferguson, that was the ring-leader in this conspiracy, told him there was a design of a general insurrection; it was once laid down, but it is now taken up again. There are other counsellors of great importance; and he names, among the rest, the prisoner at the bar. Mr. West goes a little further, and he tells you this: Says he, he did not only tell me so, but that there was a design to conciliate a correspondence with some persons in Scotland, and they were to do it under the cant of having business in Carolina. There is Mr. Keeling, he tells you too, there was a design for a general and public insurrection; that he was present with the Goodenoughs, one and the other, and that they had taken upon them to divide, and did divide the city into such and such districts: And what was the business? It was, that there might be a general insurrection; might be an insurrection, not only to destroy the King and the Duke, but to destroy all the King's loyal subjects; and in taking away their lives, to take away the life of monarchy itself, and to subvert the religion established by law. Then comes in
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Col. Rumsey, and he gives you an account that he had heard of such things in Mr. West's chamber; and tells you he had received such intelligence. And all these give you an account, that there was such a design to kill the King: And this is the substance of the general evidence produced to prove the conspiracy. Then to make this matter come home to the prisoner at the bar, first my Lord Howard gives you an account, and does directly swear, that about the middle or latter end of January last, he happened to meet with Colonel Sidney, the prisoner at the bar, and the Duke of Monmouth (they were the persons first began to have discourse about this matter) and how they met with a disappointment; the thing had slept a great while, and that it was fit it should be revived again; and that persons of quality were mentioned, who were to have an immediate care in the carrying on of the business, and that it should not be divulged to too many; accordingly there was my Lord Russel, my Lord of Essex, my Lord of Salisbury, and Mr. Hambden named. He tells you, the prisoner at the bar undertook for my Lord of Essex, and Mr. Hambden, and he tells you, the Duke of Monmouth undertook for my Lord Russel, and the rest; and that this was the result of one meeting: He goes yet further, that pursuant to this it was communicated to those persons so to be engaged, and the place and time was appointed; the place, Mr. Hambden's house; but is not so positive to the time, but only to the place and persons. He says, all these persons met, and he gives you an account, that Mr. Hambden (because it was necessary for some person to break silence) gave some short account of the design of their meeting, and made some reflections upon the mischiefs that attended the government, and what apprehensions many people had upon the late choice of sheriffs, and that there had been a male-administration of public justice; that

it was fit some means should be used to redress these grievances. He cannot tell you positively, what this man, or that man, said there; but says, that all did unanimously consent to what was then debated about an insurrection; and in order to it, they discoursed about the time, when it should be, and that they thought fit it should be done suddenly, while men's minds were wound up to that height, as they then were; and as the first witness tells you, there was a consideration, whether it should be at one place, or at several places together: He says, then it was taken into consideration, that this could not be carried on, but there must be arms and ammunition provided. The next step is, about a necessary concern, the concern of money, and therefore our law calls money, the sinews of war. My Lord Howard tells you, that the Duke of Monmouth proposed 25 or 30000 l. that my Lord Grey was to advance 10000 l. out of his own estate; but then they thought to make their party more strong by the assistance of a discontented people in Scotland, my Lord of Argyle, and Sir John Cockram, and several other people there to join with them. That pursuant to this, they all after met at my Lord Russel's, and the same debate is reassumed, and among the rest, this particular thing of conciliating a friendship with the Scotch; the Campbells, my Lord of Argyle, and my Lord Melvin were particularly mentioned. That Col. Sidney took upon himself to find out a messenger, but it was my Lord Russel's part to write the letter; one of the messengers named to convey the same, was Aaron Smith, he was known, says my Lord Howard, to some of us; and then we all agreed, that Aaron Smith, was the most proper man: Upon this they brake up that very time. Afterwards comes my Lord Howard to Col. Sidney at some distance of time, and he comes to him, and shews him threescore guineas, and told him, he was going into the city, and that they were to be given

given to Aaron Smith. He tells you after this, that he had some other discourse about a fortnight or three weeks after, with Col. Sidney; and that Col. Sidney did take notice, that he had sent him, and that he had an account of him, as far as Newcastle. So that 'tis very plain, that it was not sudden and rash thoughts, it is a little more than, according to the language we meet with in some pamphlets of late, more than heats and stirs. Gentlemen, then I must tell you here are circumstances proved in pursuance of this design, for Sir Andrew Foster informs you, how that Sir John Cockram and the Campbels, and one Monro, as I take it, came to town, and that he had discourse with some of them about their business of coming out of Scotland; and he says, they pretended it was about business of some trade to Carolina, which does still corroborate the evidence. He tells you likewise, that there being a noise of discovering the plot, they begun to hide; Sir John Cockram began to hide and skulk from place to place; they come first with that cant in their mouths, about Carolina; the messenger Atterbury, tells you, when they came to take these men, how they shuffled from place to place. So, gentlemen, I must tell you, that if in case there be but one witness to prove a direct treason, and another witness to a circumstance that contributes to that treason, that will make two witnesses to prove the treason: Because I would explain my mind, Not long ago all the Judges of England were commanded to meet together, and one that is the senior of the King's counsel was pleased to put this case. If I buy a knife of J. S. to kill the King, and it be proved by one witness I bought a knife for this purpose, and another comes and proves, I bought such a knife of J. S. they are two witnesses sufficient to prove a man guilty of High-Treason; and so it was held by all the Judges of England then present,

in the presence of all the King's counsel. And therefore, Mr. Sidney, is mightily mistaken in the law: For in case of any treason (except the treason at the bar) or in treason for clipping and coining, one witness is sufficient at this day. Now, gentlemen, supposing all this should not be sufficient, here is a libel, and it is a most traiterous and seditious libel. If you believe, that that was Colonel Sidney's book, writ by him, no man can doubt, but it is a sufficient evidence, that he is guilty of compassing and imagining the death of the King; and let us consider, what proof can be greater, than what has been given of it. Mr. Sheppard, an intimate acquaintance of his, that has seen him write, he looks upon the hand, and says, he is extremely acquainted with the hand, and says he, I believe in my conscience, this book is Colonel Sidney's hand. Gentlemen, do you expect Mr. Sidney would call a witness to be by to see him write that book?

In the next place, you have two tradesmen, Coke and Cary, and they tell you, one had seen him write once, the other had seen his hand-writing, and they both believe it his hand-writing, and they have good reason, for they have paid several sums of money, upon notes which they took, as well as this, to be his hand-writing. Gentlemen, besides that, give me leave to tell you, here is another thing, that makes it more plain. This very book is found in Colonel Sidney's house, on the table in his study, where he used to write, by a gentleman, against whom Colonel Sidney can't make the least objection; and that there was that fairness offered by the gentleman, "Pray Colonel put your seal upon it, that you may see, that no injury be done you;" but Mr. Sidney would not do it. Therefore he seals them with his own seal, and carries them to Whitehall, where they were broken open, and swears that those papers were found in his closet, whereof this

this was one. Another thing which I must take notice of to you in this case, is, to mind you, how this book contains all the malice, and revenge, and treason, that mankind can be guilty of: It fixes the sole power in the Parliament and the people; so that he carries on the design still, for their debates at their meetings were to that purpose. And such doctrines as these suit with their debates; for there, a general insurrection was designed, and that was discoursed of in this book, and encouraged: They must not give it an ill name: It must not be called a rebellion, it being the general act of the people. The King, it says, is responsible to them, the King is but their trustee; that he had betrayed his trust, he had misgoverned, and now he is to give it up, that they may be all Kings themselves. Gentlemen, I must tell you, I think I ought more than ordinarily to press this upon you, because I know the misfortune of the late unhappy rebellion, and the bringing the late blessed King to the scaffold, was first begun by such kind of principles: They cried, he had betrayed the trust that was delegated to him from the people. Gentlemen, in the next place, because he is afraid their power alone won't do it, he endeavours to poison men's judgments; and the way he makes use of, he colours it with religion, and quotes scripture for it too; and you know how far that went in the late times; how we were for binding our King in chains, and our nobles in fetters of iron. Gentlemen, this is likewise made use of by him to stir up the people to rebellion. Gentlemen, if in case the prisoner did design the deposing the King, the removing the King, and if in order thereunto he be guilty of conspiring to levy war; or, as to the letter writ by my Lord Russel, if he was privy to it, these will be evidences against him. So that 'tis not upon two, but 'tis upon greater evidence than twenty-two, if you believe this book

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was writ by him. Next I must tell you, gentlemen, upon, I think, a less testimony, an indictment was preferred against the late Lord Russel, and he was thereupon convicted and executed; of which they have brought the record. These are the evidences for the King.

For the prisoner, he hath made several objections; as that there was no war levied: For that, gentlemen, at the beginning of the cause, I told you, what I took the law to be, and I take it to be so very plainly. But, gentlemen, as to the credibility of my Lord Howard, he offers you several circumstances. First, he offers you a noble Lord, my Lord Anglesey, who says, that he attending my Lord of Bedford, upon the misfortune of the imprisonment of his son; after he had done, my Lord Howard came to second that part of a Christian's office, which he had performed and told him, he had a very good son, and he knew no harm of him; and as to the plot, he knew nothing of it. Another noble Lord, my Lord Clare tells you, that he had some discourse with my Lord Howard, and he said, that if he were accused, he thought they would but tell noses, and his business was done. Then Mr. Phillip Howard, he tells you, how he was not so intimate with him as others, but he of en came to his brother's; and that he should say, he knew nothing of a plot, nor did he believe any; but at the same time, he said, he believed there was a sham plot; and then he pressed him about the business of the address; but that now my Lord of Essex was out of town, and so it went off. Another thing Mr. Sidney took notice of, says he, 'tis an act of revenge in my Lord Howard, for he owes him a debt, that he does (besides by his allegation) does not appear.

Sidney. My Lord, he hath confessed it.

L. C. J. Admit it; yet in case Colonel Sidney should be convicted of this treason, the

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the debt accrues to the King, and he can't be a farthing the better for it. But how does it look like revenge? I find in my Lord Howard, when he speaks of Colonel Sidney, says, he was more beholding to him than any body, and was more sorry for him; so says my Lord Clare. Gentlemen, you have it likewise offered, that he came to Colonel Sidney's house, and there he was desirous to have the plate and goods removed to his house, and that he would assist them with his coach and coachman to carry them thither; and did affirm, that he knew nothing of the plot; and did not believe Colonel Sidney knew any thing: And this is likewise proved by a couple of maid servants, as well as the Frenchman. You have likewise something to the same purpose said by my Lord Paget, and this is offered to take off the credibility of my Lord Howard. Do you believe, because my Lord Howard did not tell them, I am in a conspiracy to kill the King; therefore he knew nothing of it; he knew these persons were men of honour, and would not be concerned in any such thing. But do you think, because a man goes about and denies his being in a plot, therefore he was not in it: Nay, it seems so far from being an evidence of his innocence, that it is an evidence of his guilt. What should provoke a man to discourse after this manner, if he had not apprehensions of guilt within himself? This is the testimony offered against my Lord Howard, in disparagement of his evidence. Aye, but further its objected, he is in expectation of a pardon: And he did say, he thought he should not have the King's pardon till such time as the drudgery of swearing was over. Why; gentlemen, I take notice, before this discourse happened, he swore the same thing at my Lord Russel's trial. And I must tell you, though it is the duty of every man to discover all treasons; yet I tell you, for a

man to come and swear himself over and over guilty, in the face of a court of justice, may seem irksome, and provoke a man to give it such an epithet. 'Tis therefore for his credit, that he is an unwilling witness: But, gentlemen, consider, if these things should have been allowed to take away the credibility of a witness, what would have become of the testimonies that have been given of late days? What would become of the evidence of all those that have been so profligate in their lives? Would you have the King's counsel to call none but men that were not concerned in this plot, to prove that they were plotting? Ay, but gentlemen, it is further objected, this hand looks like an old hand, and it may not be the prisoner's hand, but be counterfeited; and for that there is a gentleman, who tells you what a dexterous man he is. He says, he believes he could counterfeit any hand in half an hour; 'tis an ugly temptation, but I hope he hath more honour than to make use of that art, he so much glories in. But what time could there be for the counterfeiting of this book? Can you imagine that Sir Philip Lloyd through the bag sealed up did it? Or who else can you imagine should, or, does the prisoner pretend, did write this book? So that as on one side, God forbid, but we should be careful of men's lives, so on the other side, God forbid, that flourishes and varnish should come to endanger the life of the King, and the destruction of the government. But, gentlemen, we are not to anticipate you in point of fact, I have according to my memory recapitulated the matters given in evidence. It remains purely in you now, whether you do believe upon the whole matter, that the prisoner is guilty of the High-Treason whereof he is indicted.

Just. *Withins.* Gentlemen, 'tis fit you should have our opinions; in all the points
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of law we concur with my Lord Chief Justice: says Colonel Sidney, here is a mighty conspiracy, but there is nothing comes of it, who must we thank for that? None but the Almighty Providence: One of themselves was troubled in conscience, and comes and discovers it; had not Keeling discovered it, God knows whether we might have been alive at this day.

Then the jury withdrew, and in about half an hour's time returned, and brought the prisoner in, Guilty.

And the Lieutenant of the Tower took away his prisoner.

Monday 26 November 1683. ALGERNONE SIDNEY, Esquire, was brought up to the Bar of the Court of King's-bench, to receive his sentence.

Lord Chief Justice.

MR. Attorney, will you move any thing?

Att. Gen. My Lord, the prisoner at the bar is convicted of high-treason, I demand judgment against him.

Cl. of Cr. Algernone Sidney, hold up thy hand. (Which he did) Thou hast been indicted of high-treason, and thereupon arraigned, and thereunto pleaded not guilty, and for thy trial, put thyself upon God and thy country, which country has found thee guilty. What can'st thou say for thyself, why judgment of death should not be given against thee, and execution awarded according to law?

Sidney. My Lord, I humbly conceive I have had no trial, I was to be tried by my country, I do not find my country in the jury that did try me, there were some of them that were not freeholders, I think, my

Lord, there is neither law nor precedent of any man that has been tried by a jury, upon an indictment laid in a country, that were not freeholders. So I do humbly conceive, that I have had no trial at all, and if I have had no trial, there can be no judgment.

L. C. J. Mr. Sidney, You had the opinion of the court in that matter before: We were unanims in it, for it was the opinion of all the judges in England, in the case next preceding yours, though that was a case relating to corporations, but they were of opinion, that by the statute of Queen Mary, the trial of treason was put as it was at common-law, and that there was no such challenge at common-law.

Sidney. Under favour, my Lord, I presume in such a case as this, of life, and for what I know concerns every man in England, you will give me a day and counsel to argue it.

L. C. J. It is not in the power of the court to do it.

Sidney. My Lord, I desire the indictment against me may be read.

L. C. J. To what purpose?

Sidney. I have somewhat to say to it.

L. C. J. Well, read the indictment.

Then the Clerk of the Crown read the indictment.

Sidney. Pray, Sir, will you give me leave to see it, if it please you.

L. C. J. No, that we cannot do.

Sidney. My Lord, there is one thing then that makes this absolutely void, it deprives the King of his title, which is treason by law, *Defensor fidei*. There is no such thing there, if I heard right.

L. C. J. In that you would deprive the King of his life, that is in very full I think.

Sidney. If no body would deprive the King no more than I, he would be in no danger. Under favour these are things not to be over-ruled in point of life so easily.

L. C. J. ❧

L. C. J. Mr. Sidney, we very well understand our duty, we do not need to be told by you what our duty is, we tell you nothing but what is law, and if you make objections that are immaterial, we must over-rule them. Do not think that we over-rule in your case that we would not over-rule in all mens cases in your condition. The treason is sufficiently laid.

Sidney. My Lord, I conceive this too, that those words, that are said to be written in the paper, that there is nothing of treason in them; besides, that there was nothing at all proved of them, only by similitude of hands, which upon the case I alledge to your Lordship, was not to be admitted in a criminal case. Now it is easy to call a thing *Proditorie*; but yet let the nature of the things be examined, I put myself upon it, that there is no treason in it.

L. C. J. There is not a line in the book scarce, but what is treason.

Just. Withins. I believe you do not believe it treason.

L. C. J. That is the worst part of your case; when men are riveted in opinion, that Kings may be deposed, that they are accountable to their people, that a general insurrection is no rebellion, and justify it, it is high time, upon my word, to call them to account.

Sidney. My Lord, the other day I had a book, wherein I had King James's speech, upon which all that is there, is grounded in his own speech to the Parliament in 1603, and there is nothing in these papers, which is called a book, though it never appeared, for if it were true, it was only papers found in a private man's study, never shewed to any body; and Mr. Attorney takes this to bring it to a crime, in order to some other counsel, and this was to come out such a time, when the insurrection brake out. My Lord, there is one person I did not know where to find then, but every body knows where to find now, that is the

Duke of Monmouth; if there had been any thing in consultation, by this means to bring any thing about, he must have known of it, for it must be taken to be in prosecution of those designs of his: And if he will say there ever was any such thing, or knew any thing of it, I will acknowledge whatever you please.

L. C. J. That is over; you were tried for this fact: We must not send for the Duke of Monmouth.

Sidney. I humbly think I ought, and desire to be heard upon it.

L. C. J. Upon what?

Sidney. If you will call it a trial—

L. C. J. I do. The law calls it so.

Just. Withins. We must not hear such discourses, after you have been tried here, and the jury have given their verdict; as if you had not justice done you.

Just. Holloway. I think it was a very fair trial.

Sidney. My Lord, I desire that you would hear my reasons; why I should be brought to a new trial.

L. C. J. That cannot be.

Sidney. Be the trial what it will?

Cl. of Cr. Cryer, make an O yes.

Sidney. Cannot I be heard, my Lord?

L. C. J. Yes, if you will speak that which is proper; it is a strange thing. You seem to appeal as if you had some great hardship upon you. I am sure, I can as well appeal as you. I am sure you had all the favour shewed you, that ever any prisoner had. The court heard you with patience, when you spake what was proper; but if you begin to arraign the justice of the nation, it concerns the justice of the nation to prevent you: We are bound by our consciences and our oaths to see right done to you; and though we are judges upon earth, we are accountable to the judge of heaven and earth; and we act according to our consciences, though we do not act according to your opinion.

Sidney.

Sidney. My Lord, I say. In the first place I was brought to Westminster by *Habes Corpus*, the 7th of this month, granted the day before I was to be arraigned, when yet no bill was exhibited against me; and my prosecutors could not know it would be found, unless they had a correspondence with the grand jury, which under favour ought not to have been had.

L. C. J. We know nothing of it: You had as good tell us of some body's ghost, as you did at the trial.

Sidney. I told you of two infamous persons that had acted my Lord Russell's ghost.

L. C. J. Go on, if you have any thing else.

Sidney. I prayed a copy of the indictment, making my objections against it, and putting in a special plea, which the law I humbly conceive allowed me: the help of counsel to frame it was denied.

L. C. J. For the copy of the indictment, it was denied in the case you cited. This favour shewed you to day, was denied at any time to Sir Henry Vane, that is, to have the indictment read in Latin. Don't say on the other Side, we refused your plea. I told you, have a care of putting it in. If the plea was such as Mr. Attorney did demur to it: I told you, you were answerable for the consequences of it.

Just. Withins. We told you, you might put it in, but you must put it in at your peril.

Sidney. My Lord, I would have put it in.

L. C. J. I did advertise you: If you put in a plea, upon your peril be it. I told you, we are bound by law to give you that fair advertisement of the great danger you would fall under, if it were not a good plea.

Sidney. My Lord, my plea was that could never hurt me.

L. C. J. We do not know that.

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Sidney. I desire, my Lord, this, that it may be considered, that being brought here to my trial, I did desire a copy of my indictment, upon the statute of 46 Ed. 3. which does allow it to all men in all cases.

L. C. J. I tell you the law is otherwise, and told you so then, and tell you so now.

Sidney. Your Lordship did not tell me, that was not a law.

L. C. J. Unless there be a law particular for Colonel Sidney. If you have any more to say—

Sidney. I am probably informed, and, if your Lordship will give me time, shall be able to prove it, that the jury was not summoned, as it ought to be: My Lord, if this jury was not summoned by the bailiff, according to the ordinary way, but they were agreed upon by the Under-sheriff, Graham and Burton, I desire to know whether that be a good jury?

L. C. J. We can take notice of nothing, but what is upon the record: Here is a return by the sheriff; if there had been any indirect means used with the sheriff, or any else, you should have mentioned it before they were sworn.

Sidney. Is there any thing in the world more irregular than that?

L. C. J. I know nothing of it. That time is past.

Sidney. Now, my Lord, all men are admitted on the jury.

L. C. J. Why, you did not like gentlemen, and now you do not like those that you had. In plain English, if any jury had found you guilty, it had been the same thing. If had been a good summons, if they had acquitted you.

Sidney. When the jury, thus composed was sworn, four witnesses, of whom three were under the terror of death for treasons, were produced against me. And they confessed themselves guilty of crimes of which I had no knowledge, and told stories by hear-say. And your Lordship did promise

in summing up the evidence, that the jury should be informed what did reach me, and what not, and I do not remember that was done.

L. C. J. I did it particularly, I think I was as careful of it as possible I could be.

Sidney. My Lord Howard being the only witness, that said any thing against me; papers, which were said to be found in my house, were produced as another witness, and no other testimony given concerning them, but that the hand was like unto mine. No man can say, I read them, or shewed them to any man. None knew when they were written; the ink shewed, they had been done many, and perhaps 20 or 30 years. Yea, some passages were read out of them, without examining what went before and after, when I desired the whole might be read, it was refused, unless I specified the passage, which I could not do, knowing not one word in them. When I alledged, that in criminal cases similitude of hands could not be taken for evidence, proposed my points of law concerning constructive treason, &c. And I did conceive, that no court under the Parliament could be judges of it, and did desire the statute, which did so enact it, might be read, it could not be obtained; and I cited many judgments in Parliament.

L. C. J. Mr. Sidney, if you arraign the justice of the nation so, as though we had denied you the methods of justice, I must tell you, you do what does not become you, for we denied you nothing that ought to have been granted. If we had granted you less, I think we had done more our duty. What points of law do you mean?

Sidney. That of constructive treason, my Lord.

L. C. J. We do not go upon constructive treason, it is plain treason within 25 Edw. 3.

Sidney. Is writing an act?

L. C. J. Yes, it is *agere*.

Proclamation made for silence.

Mr. Bamfield. Sir, I pray you to hear me one word as *Amicus Curie*, I humbly suppose that your Lordship will not give judgment if there be a material defect in the indictment, as the clerk did read it he left out *Defensor fidei*, which is part of the style of his Majesty.

L. C. J. We have heard of it already, we thank you for your friendship, and are satisfied. Mr. Sidney, there remains nothing for the court, but to discharge their duty, in pronouncing that judgment the law requires to be pronounced against all persons convicted of high-treason; and, I must tell you, that though you seem to arraign the justice of the court, and the proceeding—

Sidney. I must appeal to God and the world, I am not heard.

L. C. J. Appeal to whom you will. I could wish with all my heart, instead of appealing to the world, as though you had received something extreme hard in your case, that you would appeal to the Great God of heaven, and consider the guilt you have contracted by the great offence you have committed. I wish with all my heart, you would consider your condition, but if your own ingenuity will not provoke you, nothing, I can say, will prevail with you to do it, if the King's general pardon, in which you had so great a share of the King's mercy, will not. I could wish, that, as a gentleman and as a Christian, you would consider, under what particular obligations you lye to that gracious King, that hath done much more for you. I should have thought it would have wrought in you such a temper of mind, as to have turned the rest of your life into a generous acknowledgment of his bounty and mercy, and not into a state of constant combining and writing, not only to destroy him, but to subvert the government; and I am sorry

to see you so earnest in the justification of the book, in which there is scarce a line, but what contains the rankest treason, such as deposing the King: It not only encourages, but justifies all rebellion. Mr. Sidney, you are a gentleman of quality, and need no counsel from me: If I could give you any, my charity to your immortal soul would provoke me to it. I pray God season this affliction to you. There remains nothing with the court, but to pronounce that judgment that is expected, and the law requires and therefore the judgment of the court is:

That you be carried hence to the place from whence you came, and from thence you shall be drawn upon an hurdle to the place of execution, where you shall be hanged by the neck, and, being alive, cut down; your privy members shall be cut off, and burned before your face, your head severed from your body, and your body divided into four quarters, and they to be disposed at the

pleasure of the King. And the God of infinite mercy have mercy upon your soul.

Sidney. Then, O God, O God, I beseech thee to sanctify these sufferings unto me, and impute not my blood to the country, nor the city, through which I am to be drawn; let no inquisition be made for it, but if any, and the shedding of blood that is innocent, must be revenged, let the weight of it fall only upon those, that maliciously persecute me for righteousness sake.

L. C. J. I pray God work in you a temper fit to go unto the other world, for I see you are not fit for this.

Sidney. My Lord, feel my pulse, (holding out his hand) and see if I am disordered, I bless God, I never was in better temper than I am now.

Then the Lieutenant of the Tower carried back his prisoner.

His attainder was reversed in Parliament the 1st of W. and M.

The Trial of TITUS OATES, for Perjury, in the Court of King's-Bench, on the 8th of May 1685.

THE defendant was permitted to sit within the bar, that he might the more conveniently order his papers, and manage his defence. The jurors being called, he challenged some of them, because they had been upon the grand jury, and found the bill against him; which was allowed to be a good cause of challenge.

The names of the twelve that were sworn, were,

J U R Y.

Sir William Dodson,	Robert Beddingfield,
Sir Edmund Wiseman,	Thomas Rawlinson,
Richard Aley,	Roger Reeves,
Thomas Fowles,	Ambrose Isted,
Thomas Blackmore,	Henry Collier, and
Peter Pickering,	Richard Howard.

The

The indictment charged the defendant with artful and corrupt perjury, in that he had, on the 17th of *December* 1678, sworn, there was a treasonable consult of jesuits held at the White-horse Tavern in the Strand, in the County of Middlesex, the 24th of *April* in the said year 1678, at which the jesuits Whitebread, Fenwick, and Ireland, the said Titus Oates, and forty or fifty more jesuits, were present; and that they separated themselves into several companies, or clubs, and came to a resolution to murder the King: And that he, the said Titus Oates, carried the said resolution from chamber to chamber to be signed by the said jesuits; whereas in truth and fact, he, the said Titus Oates, was not present at any such consult on the 24th of *April* 1678, nor carried any such resolution from chamber to chamber to be signed: And so the said Titus Oates, on the said 17th of *December* 1678, did commit wilful and corrupt perjury.

The King's counsel, having opened the indictment, proceeded to produce their evidence: And first the record of Ireland's conviction was read; then Mr. Foster was sworn, and gave the following testimony, (viz.)

I was so happy to be on that jury by whom Mr. Ireland, Pickering, and Grove, were tried in *December* 78. I saw Mr. Oates sworn as an evidence for the King; and he deposed, that there was a meeting of several jesuits at the White-horse Tavern in the Strand, upon the 24th of *April* 1678; and that Mr. Ireland, Whitebread, and Fenwick, were present at the meeting, and that there they did consult the death of the King, and the altering of religion; and some went, and others came. At last they reduced themselves into several smaller companies or clubs, and came to a resolution, that Pickering and Grove should assassinate the King; for which the one was to have 1500 pounds, and the other 30,000 masses said for him; and that this resolution was

drawn up by one Mico, and he (Oates) himself, went with it to several of their chambers: He went to Whitebread's chamber, and saw Whitebread sign it: He went to Fenwick's chamber, and saw Fenwick sign it; and went to Ireland's chamber, and saw Ireland sign it, upon the 24th of *April*, 78. I am positive in this, because I took notes at the trial, being a jurymen; and afterwards compared them with the trial, and found they agreed; and I have kept these notes by me ever since.

Oates demanded, if he swore they resolved to kill the King, at the White-horse Tavern, or that resolution was made after they separated into lesser clubs: Mr. Foster answered, they came to a resolution, you said, at the White-horse Tavern; and it was there drawn up by one Mico, I think; and it was carried by you for every one to sign it from chamber to chamber; for, I remember, you were asked the question, whether you saw them sign it? And you answered, that you did carry it, and saw them sign it.

Oates demanded, how he came to remember all this after so long time. Mr. Foster answered, truly it is so long ago, that had I not taken these notes at the trial, I had not been able to give so good an account.

Then about twenty gentlemen, who were students at the English college at St. Omers, when Mr. Oates was a student there, deposed, that they were sure he was at the said college from Christmas to *June* 1678, and was not absent from the college during that time, unless a day or two in *January*, when he went to Watton, a town in that neighbourhood: And these witnesses mentioned such circumstances to confirm their testimony, as shewed they could not easily be mistaken; as that Mr. Oates always dined at a table by himself in the college-hall; for, being a man in years, he pretended he could not eat as the young students did, and therefore sat at a little table by himself, nex

to the table of the fathers, to which all the students made their reverence before they sat down. Others deposed, he was appointed reader in the Sodality, and that he read there at the same time he had sworn he was in London, except a few days he was in the infirmary. Others remembered he was at St. Omers at that time, by his being with them at certain sports and recreations they used then; and several more by other circumstances. And when the printed trial of the jesuits was brought over to St. Omers, they were amazed to find Oates swear he was at a consult at London the 24th of April, when the whole college knew he was at St. Omers. Haggerstone deposed, that there was, indeed, a congregation of the jesuits held in London in April 78, as was usual, once in three years, to chuse a procurator, and other business relating to the society: And that he saw two of the fathers go from St. Omers to that congregation; but he remembered very well that Oates remained there then, for he frequented his company all that time; and when the fathers, viz. Mr. Williams and Mr. Marsh, returned to St. Omers, the defendant, Oates, asked this witness, if they had been at the consult? Others deposed, that Oates was so remarkable for his stories and ridiculous actions, and quarrelling with every body in the college, that if he had been out of the college so long as to go to London, and back again, every body must have missed him.

The Lord Gerrard, who was a student at St. Omers when the defendant was there, deposed, that Oates came to St. Omers in December 77, and he never heard he was absent till June 78, and that he remembered him particularly the 25th of March 78, when Mr. Oates desired to be appointed reader to the Sodality, and that he was constant in his reading on Sundays and holidays for five or six weeks: That he remembered his being confirmed by a Catholic Bishop, who was there, on St.

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Austin's day, the 26th of May, N. S. That when the news of the plot's being discovered came to St. Omers, it was wondered at by all the scholars, how Oates could be so impudent to pretend he was at such a consult the 24th of April 78, when all the college saw him every day in April and May at St. Omers, as much as a man could be seen in a family; and that no scholar came or went away but it was the common news of the house.

Mr. Samuel Morgan, a beneficed clergyman of the Church of England, deposed, that he was a student at St. Omers in the year 78, and had been five years reconciled to the Church of England: That he remembered Oates came to St. Omers about a fortnight before Christmas 77, and went away in June 78; and did not remember he was absent during that time, except one night at Watton: That Ireland's trial being brought to the college, wherein it was said, Mr. Oates had sworn the 24th of April 78, he was at a consult of the jesuits at the White-horse tavern, where they resolved to kill the King; having it then fresh in his memory, he found Oates was at St. Omers that very day, by a particular circumstance; for he was playing at ball that day, and struck the ball over into a court, and borrowed Mr. Oates's key to fetch it.

The court directing Mr. Oates to enter upon his defence, he objected to the indictment, that the assignment of the perjury did not pursue the oath, as it was set forth; for in the one place the word was *signat*, and in the other *signat*; and if it were *signat* in the evidence that was given, it ought to be *signat* in the perjury assigned. The court told him that they were then upon the fact, and that this objection would be saved to him if he were convicted, but it was not proper now. Besides, he should remember, there were two perjuries assigned; the one upon the first part of his oath,

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oath, viz. that he was present at a consult the 24th of April 78, *ubi-re vera*, he was not there; and if he were forsworn in that point, it would easily be believed he was forsworn in the other point, viz. That he did not carry the resolution from chamber to chamber, &c.

In the next place, he desired the opinion of the court, whether the evidence did prove the words he was said to swear, as they were laid in the indictment?

The court answered, they thought them fully proved; but that was a point of fact which the jury were to try.

Then the defendant produced a copy of the record of Ireland's conviction; which was proved to be a true copy by Mr. Percival: And he desired to have council assigned him to argue this point of law, viz. Whether the convictions and attainders of Ireland and Whitebread, of a treasonable consult the 24th of April, 78, ought not to be taken as a legal proof of the fact, so long as those attainders remained in force? And whether the averment of their being false, ought to be received against those records?

The court answered, that though that remained a good record, and unimpeachable still; yet it was lawful to say, the verdict was obtained upon the testimony of such a one, who forswore himself; and for that particular perjury the offender might be prosecuted.

Oates. If your Lordship rules that for law, I will go on: And first, I shall submit it to your consideration, why the presentment, and the finding this bill for perjury, has been so long delayed; since it appears, that the same witnesses were at the trial of the five jesuits, or might have been produced then? And I must observe, that my case is very hard, seeing the substance of my testimony received such credit, that the jury were told, upon bringing in their verdict, that all the objections against the evidence, were then fully answered: That there was nothing that the prisoners had

been wanting in to object, which could be objected; and that the thing is as clear as the sun: And yet, after six years time, I must be called in question for perjury, in my testimony of that part of the Popish plot with which the King and kingdom, four successive Parliaments, all the Judges of England, and three juries, were so well satisfied. The evidence I gave, they industriously endeavoured to falsify six years ago, by sixteen St. Omers youths, who were examined at Whitebread's and Langhorn's trials, in neither of which were they believed, because of their religion and education, and because their instructors were men of known artifice; and if my evidence were true then, it must needs be so still; for truth is always the same: And I desire your Lordship and the jury would observe, that though the King's counsel are against me now, yet they are also against themselves. Mr. Solicitor was counsel for the King at Langhorn's trial; and Sir Robert Sawyer, at Sir George Wakeman's: And can it be supposed, that it is the love of public justice, that is the cause of this attempt to falsify my evidence, after so many trials, in which it has been credited and confirmed? Can any thing tend more to subvert the methods of justice, and frighten witnesses from discovering conspiracies? Had the King, his Peers, his Commons and Judges, no honour, no justice or understanding? Shall those juries be said to have drawn the innocent blood of those men upon their own heads, and the nation? As if I am perjured, it must be innocent blood that was shed upon it.

Court. Neither Judges or jury have any share in that blood: That is your own most certainly.

Oates. My Lord, if you please to give me leave to proceed in my evidence, I desire these records of conviction may be read, which are my first proof of the consult; and

and I shall then bring witnesses, *vis a voce*, to prove what I did swear at those trials was true.

L. C. J. The question now is, Not whether there was a consult; but whether you can prove yourself to be here on the 24th of April, 78? At which time it is agreed on all hands, there was a consult, as is usual, once in three years.

Oates. I shall not go about to prove, that I was not then at St. Omers; but that I was actually in London: But to introduce this, it will be necessary for me to read the records of conviction of Whitebread and Ireland.

Then the record of Ireland's conviction was read in English.

Oates. Now read Whitebread's attainder; I will not trouble the court with the whole record.

Cl. of Cr. Thomas White, alias Whitebread, William Harcourt, alias Harrison, John Fenwick, John Gavah, and Anthony Turner, were found guilty of High-Treason, and attainted; and execution awarded against them upon that attainder.

Oates. Now I shall prove, that at the trial of Ireland, I gave so satisfactory an evidence against Whitebread and Fenwick; that my Lord Chief Justice Scroggs said, "It might be sufficient to satisfy a private conscience; though it was not a legal proof, there being but one witness.

To which Mr. Blaney was called.

He deposed, that he had looked upon his notes, but could not find exactly the words that Mr. Oates repeated to him; but there was something to that purpose.

Oates. Did not my Lord Chief Baron say to the gaoler, "You must understand ~~they~~ are no way acquitted, the evidence is so full against them by Mr. Oates's testimony, that there is no reason to acquit them: It is as flat as, by one witness can be?"

Blaney. There is such a passage in my notes.

Oates. See what my Lord Chief Justice Scroggs said in summing up the evidence against Ireland, viz. "When the matter is accompanied with so many other circumstances, which are material things, and cannot be evaded or denied, it is impossible almost, for any man, either to make such a story, or not to believe it when it is told."

Blaney. I find such a passage in my notes.

Oates. And in summing up the evidence against Ireland, Pickering and Grove, had he not this expression; "You have done, gentlemen, live very good subjects, and very good Christians, and like very good Protestants; and now much good may their thirty thousand masses do them?"

Blaney. There is such an expression in my notes.

Oates. Have you the notes of Whitebread's trial?

Blaney. No, I have them not here.

Oates. Then I must desire the printed trials may be read.

L. C. J. No, they are no evidence.

Oates. Then give me leave to mention what your Lordship said about your satisfaction with the evidence: You were then Recorder of London.

L. C. J. Ay; with all my heart: And whatever I said I will own.

Oates. Will your Lordship be pleased to be sworn then?

L. C. J. No, there will be no need for that; I will own any thing I said then.

Oates. When you Lordship gave judgment of death upon the five jesuits and Langhorn, speaking of the objections that had been made against the evidence, you said, "Your several crimes have been proved against you; you have been fully heard, and stand convicted of those crimes you have been indicted for.

L. C. J. I:

L. C. J. I believe I might speak to the same purpose.

Oates. And when the jury brought in their verdict against the five jesuits, you said, "Gentlemen, there has been a long evidence against the prisoners; they were all indicted, arraigned, and tried for high-treason, depending upon several circumstances. They can none of them say, the court refused to hear any thing they could say for themselves; but upon a long evidence, and a patient hearing of the defence they made, they are found guilty; and for any thing appears to us, it is a just verdict you have given."

L. C. J. I might say something to that purpose at that time; and no doubt, as the case then stood, the jury did find an unexceptionable verdict.

Oates. And, my Lord, when you were counsel for the King in Colledge's trial at Oxford, addressing yourself to the jury, you had this expression: "We come not here to trip up the heels of the Popish plot, by saying, that any of them who suffered for it, died contrary to law."

L. C. J. Deceive not yourself; all this you have insisted on hitherto, has not been to the purpose, or is any sort of evidence in this case. What my Lord Chief Justice Scroggs said at any of those trials, or what I said, or any other person who was counsel or Judge upon the Bench; it was but our opinion on the fact, as it occurred to our present apprehensions, and is no evidence or binding to this jury. And there is no doubt, but those juries did believe the evidence you gave then, or they would not have convicted the prisoners. I do not commend you for insinuating these things, as introductory and preparative to your defence; but it is no evidence one way or other. We have many times, in Westminster-Hall, verdict against verdict: And in these cases, we give our opinions accord-

ing to the present testimony that is before us.

Oates. If then I prove, my Lord, that Ireland was engaged in a design against the late King's life, and was a priest and a jesuit; will not this be a collateral evidence to render my credit sufficient, and support my testimony?

L. C. J. It may give some credit to your testimony; but it is not, of itself, sufficient upon this indictment. Nay, I will suppose there was a consult of jesuits in the Strand, the 24th of April, 78, where these, you say, were all present, and did come to the resolution you mention; and yet you will not be innocent if you were not there too, as you swear. Therefore give us some testimony, to satisfy us you were there, if you would set all right again. Call two or three witnesses, to prove you were in town the 22d, 23d, or 24th of April, it would be the best defence you could make.

Oates. I will follow your directions, my Lord.

Oates. Then Cecilia Mayo was sworn.

Oates. Pray give the court an account, if you did not see me in London the latter end of April, or the beginning of May, 1678?

Mayo. My Lord, I saw him the latter end of April, at my master, Sir Richard Barker's, where I then lived; and he came thither again in a few days: I remember it by this circumstance; Sir Richard was sick all the month of April, and in the country, and came to town but now and then; and Mr. Oates came when he was absent: And a young man that lived in the house, came and told me, there was Mr. Oates in a strange disguise, and he believed he was turned quaker. I had never seen Mr. Oates before then.

L. C. J. How do you know that to be Mr. Oates then?

Mayo. The family knew him, and they told me it was he. My Lord, he came three

three or four days afterwards to the house, and then the young man came and told me, Parson Oates was turned jesuit: And coming to Sir Richard's lady's sister, she said to him, I hear you are turned jesuit, and we can have no society with you now; but he staid dinner with them, and most part of the day. Then he came the latter end of May: Whitsuntide was in May that year, and I know he came the second time before Whitsuntide; for we used to wash and scour before that time; and I was sending to a woman to help wash and scour, when the young man told me he was there.

L. C. J. What was the name of that young man you speak of?

Mayo. His name was Benjamin; but he is dead.

L. C. J. Is Sir Richard Barker living?

Mayo. He is, my Lord; but he is not well, or he would have been here.

L. C. J. Who dined with him when he dined there?

Mayo. There was my Lady's sister, Madam Thurrel, and her two sons: She is in Wales, but her sons are dead. There was one Dr. Cocker too, who is in Wales at present. And there were two of my Lady's daughters, that are living in Lincolnshire, I think.

L. C. J. It is a great misfortune to have so many dead, or so far remote.

Oates. My Lord, six years makes a great alteration in a family.

Att. Gen. Mr. Oates has had time enough to send for his witnesses, for he has had notice of his trial this half year. Pray, Mrs. Mayo, what coloured cloaths had Mr. Oates when you saw him first?

Mayo. He had a whitish hat, and coloured cloaths.

John Butler, coachman to Sir Richard Barker, deposed, that, as he remembered, the first time he saw Mr. Oates was in May,

78, before the plot was discovered, that he came to his master's in a disguise, having a white hat flapping over his eyes, his hair cut close to his ears, and a grey short coat on; and the next time he saw him at his master's he had a cinnamon-coloured coat, a long black peruke, a black hat with a green ribbon, and green cuff-strings at his wrists; and that he dined at his master's about seven times.

The Chief Justice then demanding of Mrs. Mayo, butler's fellow servant, how often Oates dined at her master's, Sir Richard Barker's, affirmed, he dined there but once, and that he had on a grey coat, a grey hat, and a short brown wig; and that he afterwards came in black cloaths, and a long brown peruke.

The Chief Justice observing there were several contradictions in their evidence, Oates said, these things were very lean stuff to perjure a witness upon: That his Lordship was not so strict with the St Omers witnesses, and what did it signify, whether the wig were long, or short, black or brown?

The Chief Justice replied, there was no other way to detect perjury, but by such circumstances: In Susanna's case the perjury was discovered by circumstances.

Philip Page deposed, that he was servant to Sir Richard Barker, and Oates came thither disguised in a light-coloured coat, a broad-brimmed hat, and his hair cut short to his ears, and asked him for Dr. Tongue and Sir Richard; and he thought this was in May, 78; but could not be positive what month or year it was.

Mr. Walker deposed, he met Oates between St. Martin's-lane and Leicester-fields, in a disguise, between Lady-day and the latter end of April, 78.

The Chief Justice demanded, where he lodged or dieted all that while he pretended to be in town? Oates answered, that was

not:

not now the question. If he proved he was not at St. Omers in the months of April and May, but here in London, he proved the St. Omer's evidence to be false; and it was not to be expected, as he was engaged among papists, and afterwards an evidence to discover their treasons, they would come to testify any thing in his behalf now.

Then he called the Earl of Huntington as a witness for him, and desired his Lordship would give an account, what credit he had in the house of Lords upon his discovery.

The Earl answered, he believed Mr. Oates found a good reception in the house of Lords, which was founded upon an opinion, that he was an honest man; but since that time it appearing there were so many and great contradictions, falsities, and perjuries in his evidence, upon which so much innocent blood had been shed, he believed a great many that were concerned in the trials of those unfortunate persons were heartily afflicted and sorry for their share in it: And he believed, most of the House of Peers had altered their opinion of this man's credit, and looked upon his evidence to be very false.

Mr. Oates called a great many other persons of quality, Peers, Judges, and Commoners; some of whom did not appear, and the rest testified nothing to his advantage, but rather the contrary; particularly, the Lord Chief Baron, of whom Oates desired, that his Lordship would declare the satisfaction he received concerning the fairness and fullness of the evidence given at the trials of Whitebread and Langhorne. To which the Chief Baron answered, there were a great many persons, and gentlemen of good families, who came from St. Omers, and gave evidence of Mr. Oates's being there when he said he was in London. Oates demanding further, if the jury believed them at that time? the Chief Baron

answered, he could not tell what the jury did, but he never had any great faith in Mr. Oates himself: Whereupon Oates replied, he was not at all concerned at this: He valued himself more upon his innocence and integrity than any man's good opinion whatever: He would stand to what he had sworn with his last breath, and seal it, if occasion was, with his blood. The Chief Justice answering, it were pity but that it were to be done by his blood, Oates replied, Ah, my Lord, I know why all this is, and so may the world very easily too; but this will not do to make the plot disbelieved.

The King's counsel then called Mr. Smith to depose, that Oates suborned him to perjure himself: But the Chief Justice refused to hear the testimony of a man who came to swear he had perjured himself at a former trial.

Then they produced witnesses, who proved that Oates would have suborned Clay at the trial of the five jesuits.

Mr. Howard deposed, that Clay was not at dinner at his house in May 78, as Clay had deposed.

And a paragraph of Oates's narrative was read, wherein he had sworn, "That he returned to St. Omers, three or four days after the consult at the White-horse."

Whereupon Mr. Attorney observed, that Oates's witnesses swore he was in London the latter end of May; which could not be true, if Oates himself swore true in his narrative.

Then a resolution of the House of Lords was read, at Oates's desire, importing, that they believed the Popish plot.

And another resolution, for taking up Capt. Berkley, for villifying Oates's evidence.

Being directed to go on with his defence, he objected, that the Papists were not legal witnesses, because they were parties in the cause; and desired counsel to argue that point

point of law. To which the Chief Justice answered, that was no point of law, "Oates appealed to all his hearers, if he had justice done him." The Lord Chief Justice then replied, he was an impudent fellow; he must appeal to none but the court and the jury: They should stop his mouth if he did not behave himself as he ought: He would suffer none of his commonwealth appeals to the mob.

Oates then objected, that the witnesses were bred up in seminaries, against law: The Chief Justice replied, every man that was bred a dissenter was bred up against law.

He insisted, that a witness for the King could not be indicted of perjury, or the plot called in question now.

The Chief Justice answered, this was nothing to the purpose. After which, Mr. Oates proceeded to sum up the evidence for himself, and observed, that Mrs. Mayo came and gave her evidence voluntarily, without any hopes of a reward, but out of a love to justice; and therefore insinuated, that her testimony was not to be suspected; for people seldom perjured themselves, but where there was malice or interest in the case. Then he repeated the evidence of Butler and Page, and said, he had subpoena'd Sir Richard Barker, to confirm the evidence of these people: And he did expect that Mr. Smith would have been examined: But he perceived the court were tender of that point, as knowing it would then easily have been seen, upon which side he was suborned.

Court. It was to do you right, we refused to have him sworn; but if you consent to it, he shall be examined still.

Oates. My Lord, the evidence on which I am indicted for perjury, is the same that was given six years go. There was there sixteen witnesses produced against me; but what credit did they receive? Now, if the evidence I gave then was to be believed,

though opposed by so many witnesses, what new objection does arise, which was not then urged, and received an answer? And I hope those passages of heat, that have fallen from me, shall not make me fare the worse in your judgment. I called some noble Lords to testify for me; but either the distance of time has wrought upon their memories, or the difference of the season has changed their opinion: So that they now disbelieve what they believed before, and perhaps for as little reason as——

L. C. J. As they believed you at first.

Oates. Yes, truly, my Lord; for I cannot expect, that a man who believes without a principle, should not recant that belief without a reason—I name nobody.

L. C. J. But the nobility, that are present, and have been witnesses in this cause, are all persons of that honour, that the court is bound to vindicate them from these scandalous reflections; but only I think, a slander from your mouth is very little scandal.

Oates. Nor from somebody's else neither: I find, my Lord, I am not to be heard with patience.

L. C. J. You do not deserve to be heard at all: Can't you speak without reflections?

Oates. Was ever man dealt with as I am? Or had such evidence offered against him? Here are the youths of St. Omers seminary, Sir George Wakeman, and my Lord Castlemain, known Papists; and perhaps Popish recusants convict too: And the record of my Lord's acquittal is brought as an evidence of my being perjured; when all the world knows, he came off, because there was but one witness against him. And Wakeman's acquittal too is brought, and he swears, that what I deposed against him was false; but had it not been for two dishonest persons, (one of them is now in my sight) we could at that time

time have proved five thousand pounds paid him, and that he gave a receipt for it. This, I am sure, had I been a witness for the fanatic plot; I had never been questioned, though my evidence had been false: But the Papists have now a turn to serve, and come to bear this testimony on purpose to falsify my evidence, and bring off the Popish Lords, who now stand impeached of high-treason. But, I hope, as the court would never admit indictments of perjury against the witnesses in my Lord Shaftsbury's case, so you will not admit it here. My Lord, it is not me they prosecute, but the whole Protestant interest. Do they not, hereby, arraign the proceedings of several Parliaments? of all the courts of justice, and the verdicts of those juries that convicted the traitors? For my part, I care not what becomes of me; but the truth will one time or other appear: And since I have not the liberty to argue what is most material for my defence, I appeal to the great God of heaven and earth, and once more in his presence, and before this auditory do avow, that my evidence of the Popish plot is true in every part of it, and will expect from Almighty God the vindication of my integrity and innocence. Having concluded his defence, he said he was troubled with the gout and stone, and desired that he might not be put in irons again, he being only a debtor to the King upon a civil account; and if he were convicted on these indictments, he could be but in execution for a trespass; and therefore thought he ought not to be so handled. The Marshal informed the court, that it was but the last night, ropes were brought into his chamber to favour his escape. Then the court directed he should be kept *in salva & arcta custodia*.

Then Mr. Solicitor summed up the evidence for the King; but, before he had made any great progress, Mr. Oates said,

he was ill, and desired leave of the court to withdraw.

Then Mr. Solicitor proceeded; and having summed up the evidence that had been given for the King, he observed, that of the twenty witnesses produced, not above two or three of them were at the former trials; though, indeed, they testify the same things that were attested then; but with many other circumstances and particulars. That to this, indeed, Oates had objected, that several witnesses came from St. Omers before, but were not believed; but that the men were convicted, condemned and executed upon his testimony. That he had also brought a counter-proof, and endeavoured to shew, he was actually in England, when the St. Omers witnesses had sworn him to be in the College.

As to the evidence of Page, Mr. Solicitor observed, that he was not positive either to the month or year he saw Mr. Oates; and as for Walker, the parson, he being asked, what circumstances he knew the time by, said, it was a year and a quarter before the plot was discovered; which was a year before Oates pretended to be at the consult; and therefore could do him no service.

As to the evidence of Mrs. Mayo and Butler, he observed, they contradicted one another: For she deposed, that the first time Oates came, she did not see him; and Butler swears, she looked out of the window, and did see him as well as he: And, she said, he was in grey cloaths, a white hat, and a short peruke; and Butler said, he had no peruke, but his hair cut short to his ears. Then the second time, she swears, he was in black cloaths, and an indifferent long peruke, and that the peruke was brown. And Butler swears, he was in Cinnamon-coloured cloaths, and a long black peruke; so that the witnesses could not be reconciled to one another. He observed too, that she had sworn, Oates was at her master's

master's a week before Whitsuntide, which was the 19th of May; and this contradicted Mr. Gerrard's testimony, who swears, they were both confirmed the 16th, at St. Omers; which was so remarkable a circumstance, that there was no room to think Mr. Gerrard mistaken.

And farther, that Mr. Oates himself had contradicted his own witnesses; for he had sworn he went over with the fathers three or four days after the consult, which was the 24th of April; and they attest that he was here in the middle of May: And if it should be admitted the consult continued five or six days, as he had suggested, yet that would not bring it to the time they had sworn to.

That false witnesses were often detected by small circumstances, but that these were very remarkable; and it was impossible they could both swear true.

That the evidence of Clay the priest, on which such stress was laid at a former trial, was not only taken away by Mr. Howard's testimony, but the additional crime of subornation was now fixed upon Oates, who it appeared, had threatened Clay he would hang him, if he did not swear what he suggested to him; and it was well known what fears such people lay under at that time.

That it was impossible Mr. Oates could be so long in town as he pretended, and be seen by no body but those few persons he mentioned, considering his large acquaintance; and that he appeared to publicly, as his witnesses deposed.

That though he had lodged at the houses of persons that did not care to give their evidence in this matter, yet it was strange he could not produce one circumstance to prove his lodgings at any place, during that time, if he could not have the testimony of the landlord of the house; and that none of those he had conversed with, or was intimate withal, should see him, or be able to

give an account of him, was one of the strangest things in the world.

That indeed he insisted upon it, that the calling his credit in question, was to arraign the justice of the nation, the wisdom of the Parliament, and the honesty of the juries, who convicted those he had accused. But the Solicitor urged, that if the thing was duly considered, the not punishing this heinous offence with the utmost severity the law would allow, now these circumstances had appeared to make it evident, would be a much more greater reproach to the nation.

That it was strange, indeed, that the defendant should ever obtain that credit he once had: But it was not then imagined, that any man on earth could become so impudent as to expose himself before the High Court of Parliament, and the great courts of justice, and there tell a most infamous lie, to deprive men of their lives. The hardness of the attempt, was one great inducement to the belief of it; because no man could be presumed to dare the doing of such a thing, if he had not had some foundation of truth to build upon. And when he had made this discovery of a most horrid and bloody conspiracy, to murder the King, overturn the government, and massacre all the Protestants in the kingdom; it was natural enough for the Parliament to be alarmed, and take all imaginable care to prevent the accomplishment of so much mischief. If we consider too, how much easier it was for him to relate his evidence in a continued story, than afterwards it was to maintain it, when he was opposed by them that were accused, who best knew by what means to prove him false.

That the care the Parliament took to disappoint any designs of this nature, and the means they used for the security of the King and kingdom, and the preservation of our religion and lives (which was previous

to the trials) naturally put the whole nation under great apprehensions of danger, and made the way much easier for him to be believed. Under these circumstances (and these improved by designing men) came those unhappy persons to be tried; which lessens our wonder, if under these disadvantages, while the men who tried them were under these fears and apprehensions, they had the ill fortune to be convicted. But when men had a little overcome their fears, and began to consider his evidence more calmly, Oates soon lost his credit, and the men he afterwards accused, were all acquitted.

Nor was this prosecution any reflection on the Protestant religion, whose cause he falsely assumed. The Protestant religion had no share in the invention, and needed not the support of a lie. It was rather a vindication of our religion, to punish such offenders; and the proper way to maintain the justice of the nation, and wipe off that reproach that this man's perjury has brought upon it.

Then my Lord Chief Justice summed up the evidence, and gave his directions to the jury: And to the observations Mr. Solicitor had already made, he added, that the dreadful apprehensions people were under of their religion, the subversion of the government, of the King's being murdered, and of their throats being to be cut by the Papists, at the time of Ireland's trial, was arrived to that height, and Oates's discovery of those impending dangers so much credited, that all other people appeared below him; and greater respect was shewn him, than to the branches of the Royal Family. And in public societies, sometimes, this profligate villain was caressed and drank to, and saluted by the name of "The Saviour of the Nation". And that it was no wonder, if under such a consternation, or rather infatuation, of all sorts of people, all of the Romish persuasion were looked on with an evil eye; and the conviction of those who were ac-

cused, rendered too easy. He observed, that the principal part of Oates's defence consisted in this, that because he was believed formerly, before his villany was detected, they therefore should believe him now, notwithstanding his perjury had been discovered; and that, to the positive testimony of twenty-two witnesses, who had sworn he was at St. Omers, he had not made the least shadow of an objection, but only that they were Papists, and he was a Protestant. But his Lordship observed, there were rascals of all persuasions; and he thought it not much for the honour of the church, that Oates called himself a Protestant: That they knew Dr. Oates had been very liberal to himself; he had given himself baptism, and given himself the Doctor's degree, and now he gave himself the title of the reforming Protestant, Mr. Oates. That we had Protestant shoemakers, and Protestant joiners, and all sorts of true Protestant rascals; but it would become the jury to assert the honour of their religion, by disowning any fellowship with such villains, or their actions.

That besides the evidence against him, they should consider the improbability of his testimony: That fifty persons should meet together at a Tavern, and come to a resolution to kill the King, and subvert the government, and alter the religion: And that this resolution being drawn up at the tavern, they should separate themselves into lesser clubs and companies, and none of them sign it when they were all together, and among themselves; but should afterwards have it carried up and down from one house to another, and find nobody to trust with it but Mr. Oates, who was not one of their order, and did not appear to have any credit amongst them; when the affair was of that importance, that, if discovered, it must subject them to present destruction, and ruin their whole party. Could it be believed, that any man should be so void of sense and reason

reason, and that of fifty together, and those reputed the subtlest of mankind, there should not be one man that should take care of a more rational management of so great and hazardous an undertaking? When they were met together, and might have dispatched the business in a quarter of an hour, that they should separate themselves into several parts of the town, and trust a resolution of that nature in Mr. Oates's pocket; in whom, if they had more confidence than they seemed to have, yet it was folly and madness to give him that opportunity of destroying them all, and making his own fortune: And that, if there were no other evidence than the testimony of the thing, his Lordship said, it would have gone a great way with him; but that there being the super-added testimony of twenty-two witnesses, there was no room left to doubt of the falsity of his evidence.

That as to the business of Smith, though the court, in their private judgments, did believe the thing, yet they thought it not fit to permit, that persons should, upon their oaths, confess themselves guilty of perjury, and afterwards give evidence against others; yet by the records of Parliament, and other evidence, there was enough to make that matter clear. For by Oates's narrative, it appears, that his first evidence tended to bring Smith into the displeasure of the people; for his way was to frighten those he designed to deal with, and thereby force them to comply with his designs. And there could not be a more plausible accusation at that time, than to charge a man with saying something against the Parliament, or with being in a combination to subvert the Protestant religion: But when he has a turn to serve by him, then this man, on whom he had fixed such an odious character, he tells us is really no Papist, but is engaged in service for his King and Country; and has Mr. Oates's passport, which was a thing of no small advantage to him at that season. This

was, with great reason, made use of by the King's counsel, as an evidence of his tampering: For the man suddenly alters his opinion of one he had before accused, and produces him as an honest man to give evidence for him. And this, they urge, must be intended to be done by practice and threatnings: And the rather, for that it had been proved, that he did actually practise upon Clay in like manner. And my Lord Chief Justice concluded, that if the witnesses for the King swore true, as he saw no colour of an objection against their testimony, then Oates was the most perjured villain upon the face of the earth.

Then the court told the jury, they might drink before they went from the bar, but they did not desire it; and having withdrawn a quarter of an hour, they returned with this verdict.

That the defendant was guilty of the perjury whereof he was indicted.

The Chief Justice told them, he was satisfied in his conscience, they had given a just verdict, to which the rest of the judges assented; and then the court arose.

The Trial of TITUS OATES for PERJURY, in the Court of King's-Bench, on the 9th of May, 1685.

THE indictment set forth, that the defendant Titus Oates, at the trials of Ireland, Pickering, and Grove, on the 17th day of *December*, in the 30th Year of the late King Charles II. did falsely swear, and give evidence to the jury who tried that cause, that the said William Ireland, was in town upon the first or second day of *September* 1678. Whereas in truth, the said William Ireland was not in town on the first or

or second day of *September* 1678; and so the said Titus Oates, did commit wilful and corrupt perjury.

The indictment further sets forth, that the said Titus Oates, at the trials of Whitebread, Fenwick, and other jesuits, on the 13th of *June*, in the 31st year of the late King, did falsely swear, and give evidence to the jury who tried that cause, that William Ireland took his leave of him, the said Titus Oates, and others, at the chamber of the said Ireland, then being in *Russel-street*, *Westminster*, between the 8th and 12th days of *August*, 1678. Whereas in truth, the said William Ireland, did not take his leave of the said Titus Oates, or any other person at his chamber in *Russel-street*, between the said 8th and 12th days of *August*, and so the said Titus Oates did again commit wilful and corrupt perjury.

The King's counsel, having opened the indictment and the evidence, produced the records of the said two trials mentioned in the indictment, and then called the witnesses: Whereupon Mr. Harriot and Mr. Waterhouse were sworn, and Mr. Harriot deposed, that at the trial of the five jesuits, Oates did positively swear, that Mr. Ireland the jesuit did take leave of him and others at the same Ireland's chamber in *Russel-street*, betwixt the 8th and 12th of *August* 1678. "He was foreman of that jury."

Sol. Gen. What say you, Mr. Waterhouse?

Waterhouse. I was of that jury too. — Oates deposed, that Mr. Ireland took his leave of him the 12th of *August*. My Lord Chief Justice Scroggs then asked him, are you sure it was the 12th? And then he said, he would not be positive it was the 12th; but between the 8th and 12th it was, I am positive upon my oath.

Oates. Mr. Harriot, did I swear that he took his leave of me, or I took my leave of him?

Mr. Harriot. You swore that Ireland took his leave of you and others.

Oates. Did Mr. Harriot take notes at the trial?

Mr. Harriot. Yes, I did; and it was my manner, in all trials I was concerned as a juryman, to read the trials strictly over when they were printed, and compare them with my notes: And this I found to be in the printed trial, according to my notes.

Oates. Mr. Waterhouse, you did not take notes: Pray, how come you to remember that I was so positive, as to the time betwixt the 8th and 12th of *August*?

Mr. Waterhouse. Because my Lord Chief Justice made a stop, when you said it was the 12th of *August*, and bid you consider; and you considered it, and did affirm positively, that it was between the 8th and 12th of *August*.

Mr. Foster was sworn.

Sol. Gen. Pray tell what you remember Mr. Oates swore at Mr. Ireland's trial, about Mr. Ireland's being in town.

Mr. Foster. I was one of the jury at the trial of Mr. Ireland, Pickering, and Grove; and Mr. Oates and Mr. Bedloe were sworn as witnesses for the King: And Mr. Bedloe deposed, that there was a meeting at Harcourt's chamber, and Ireland, Pickering, and Grove were there; and that this was the latter end of *August*. Mr. Ireland made his defence, and endeavoured to prove, that he was not in town from the beginning of *August* to the middle of *September*, and brought several witnesses. But upon his denying to be here the latter end of *August*, Mr. Oates did come and swear; I am certain (says he) that the 1st or 2d of *September* he was in town; for then I had of him twenty shillings.

Oates. Was I positive that he was here in town the first or second of *September*?

Mr.

Mr. *Foster*. You were positive to the first or second; I have it in my notes.

Mr. *Byfield*, another of Ireland's jury was sworn.

L. C. J. What did Oates swear?

Mr. *Byfield*. Mr. Oates did positively assert, that Ireland was here in town the first or second of *September*; and to confirm it, he said he received of him twenty shillings.

Then Mrs. *Ireland*, the mother of him that was executed, his sister Anne Ireland, and two more women, deposed; that the said Mr. Ireland went out of town on Saturday the 3d of *August* 1678, and that he returned to his lodgings in town again, being in the same house where his said mother and sister lodged, on the 14th of *December* following. The Lord *Aston* deposed, that Mr. Ireland came to his house, at Stnaden in Hertfordshire, on the 3d of *August*: That on Monday the 5th of *August*, Mr. Ireland, accompanied him to St. Albans, where he met his brother and sister Southcoat, and that they all travelled together to Tixhall, his Lordship's house in Staffordshire, where they arrived the 8th of *August*.

Sir *Edward Southcoat* deposed, that on Monday the 5th of *August*, he lay with the Lord *Aston* and Mr. Ireland, at the Bull at St. Albans; and that they set out together the next day, and travelled to Tixhall, the Lord *Aston*'s seat, in Staffordshire, where they arrived on Thursday following: That they remained there till Tuesday after, and then went to St. Winifred's Well in Wales, returning to Tixhall again the 16th of *August*; and Sir *Edward* named every house they lay at on the road in this journey. He also deposed, that he set out with Mr. Ireland, from Tixhall, on Monday the 9th or 10th of *September*; and the fourth day they reached his father's house, at Kingston in Surry; and, on Saturday following, Mr. Ireland went from his father's house to London.

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Mr. *John Southcoat* gave the same account of the journey with the Lord *Aston* and Mr. Ireland, from St. Alban's to Tixhall, and St. Winifred's Well; and of Mr. Ireland's returning to London in the middle of *September*; which he remembered the better, having bought Mr. Ireland's horse at the time he returned to town: And this circumstance Sir *Edward* also remembered.

Oates demanding if Mr. Southcoat was sure that Ireland was in his company from the 5th of *August* to the 16th? Mr. Southcoat answered, yes, every day; he remembered it very well; but where Mr. Ireland was from the 16th of *August* to the time he returned to London, these witnesses could not say; only that they saw him several times in Staffordshire during that interval.

Harrison, Sir John Southcoat's coachman deposed, that he drove his master from St. Alban's to Tixhall, and from thence to Holywell in Wales, in *August* 78; and that Mr. Ireland was in their company all the time.

The former witness deposed, that in *September* he returned, with Mr. Ireland, to his master's house, near Kingston in Surry; and that Mr. Ireland having sold his horse to Mr. John Southcoat, his master's son, he went with Mr. Ireland to his lodgings in Russel-street, in town, on Saturday the 14th of *September*, and brought the horse back to his master's.

This account, the Chief Justice observed, agreed with what the woman deposed, that Ireland returned to his lodgings, in town, a fortnight before Michaelmas; and, directing his speech to the defendant Oates, said: Thusfar it is as clear as the sun at noon-day. I must tell you, *prima facie*, it is so strong an evidence, that, if you have any sense, you must be concerned: it.—Upon my faith, I have so much charity for you, as my fellow creature, as to be concerned for you.

8 B.

Oates:

Oates answered, "It is not two straws matter whether you are or no; I know my own innocence."

The Chief Justice replied, thou art the most impudently hardened wretch that ever I saw.

Oates replied, you may think what you will, my Lord; but these Popish traitors will swear any thing, and suborn witnesses upon witnesses against me, to discredit the Popish plot.

George Hobson deposed, that he lived at the Lord Aston's, and that Mr. Ireland came to his Lordship's house, at Standen in Hertfordshire, on Saturday the 3d of *August* 78; and he travelled with the Lord Aston, and Mr. Ireland, to Tixhall, and saw Ireland every day, from the 3d of *August* to the 16th.

Several other witnesses deposed, that Mr. Ireland came to Tixhall the 8th of *August*, 78, where he staid till the 13th, then went to Holywell in Wales, and returned to Tixhall the 16th.

Mrs. Harwell deposed, that Mr. Ireland came to her house, at Wolverhampton in Staffordshire, on the 17th of *August*, 78, and staid there till Monday the 26th, and then returned to Tixhall, as he said: That he came to her house again on the 4th of *September*, and on the 7th of *September* went away from her house for good and all.

Oates demanding if this witness was at Ireland's trial, she answered, no; but said she heard, on the 19th of December, 78, that Mr. Ireland was tried the 17th, two days before; and Mr. Oates had sworn he was in town, when they could prove he was in Staffordshire: And she sent away a messenger immediately to a friend in London, to acquaint him, that Mr. Ireland was falsely accused, and to petition his Majesty, that they might bring up witnesses to prove Mr. Ireland was in Staffordshire when Oates swore he was in town: And the King staid

the execution five weeks; but at length he was executed.

A great many more witnesses deposed, they saw Mr. Ireland at Wolverhampton at the times the last witness mentioned.

Sir Thomas Whitegrave, a justice of peace, deposed, he saw Mr. Ireland on Tixhall bowling-green, on Thursday the 29th of *August*.

Mr. Fowler deposed, he saw him at Etching-hill in Staffordshire, the 27th of *August*, 78, and at Tixhall bowling-green the 29th.

Several other witnesses confirmed the testimony of the two last.

Mr. Fallas deposed, that on Saturday, the first of *August*, 78, he was hunting with Mr. Ireland in Mr. Gerrard's park, and they killed a buck.

Other witnesses deposed, they saw Mr. Ireland at dinner at Mr. Gerrard's, on the first of *September* 78.

Other witnesses deposed, they saw Ireland at dinner, at Mrs. Crompton's house, at Millage in Staffordshire, on Monday the second of *September*, 78.

Mr. Pendrel, and Mrs. Pendrel deposed, that Mr. Ireland came to their house, at Boscobel, in Staffordshire, the second of *September*, 78, and went from thence the fourth of *September*.

The King's evidence being finished, Mr. Oates proceeded in his defence, and said,

I am not the only evidence of Mr. Ireland's being in town in the month of *August*; nor the only witness that he was in town about the time I mentioned in *September*.

My Lord, the first thing I shall offer to your consideration is, the hardship I lie under, of being put to disprove what the King's counsel now charge me with, after six years time. Now, why has the prosecution of this pretended perjury been delayed so long? When it appears, the witnesses to prove it were known six years since; and there has been

been no new fact discovered that was not then known: There is no reason can be assigned for this delay, but to render it the more difficult for me to maintain the evidence I then gave, so many persons being since dead, or gone beyond the seas; and many things that were then fresh, now grown out of memory: And if such practice is to be admitted, no witness is safe in giving his testimony against a conspirator.

And here, my Lord, is only a bare point of time upon which this perjury is assigned; the substance of the evidence, I gave at the trial of Mr. Ireland, and the rest, about the Popish plot, is not pretended to be disproved: Let it be remembered, that Ireland was convicted of a treasonable resolution to murder the late King, and not for being in town in *August* or *September*, 78; which is the perjury now assigned. And, my Lord, it is unreasonable to tie up witnesses, who come to discover conspiracies, to speak positively to every little circumstance of time and place, and such niceties; it is usual to speak with latitude in those cases; and, I believe, I did not confine myself either to the 1st, or 2d, 5th, 6th, 7th or 8th; but, my Lord, that he was in *September* there, I am positive; therefore I must beg the opinion of the court, whether Mr. Foster did prove I was positive to the 1st and 2d days of *September*, 78.

L. C. J. The evidence is plain, that you did swear positively to those two days, and mentioned this material circumstance to confirm it, that either the 1st or 2d of *September* you received twenty shillings of him in town. Now, that circumstance of his kindness, was not a circumstance either of time or place.

Oates. Then, my Lord, the first thing I shall offer, is the record of Mr. Ireland's conviction of high-treason.

L. C. J. It is admitted, of all sides, that Ireland was convicted and attainted of treason.

Oates. Then, my Lord, let it be observed, that the principal part of Mr. Ireland's defence, was an endeavour to prove, he was not in town between the 8th and 12th of *August*, nor the 1st or 2d days of *September*, which are the times now in issue; and to prove this, Mr. Gifford and his sister and mother were produced at Mr. Ireland's trial; and Mr. Whitebread's trial being six months after, he endeavoured also to prove, that Mr. Ireland was out of town at those times, and produced Mr. Gifford, and several other witnesses, to prove it, to the number of sixteen: And, notwithstanding all those witnesses, the jurors who tried Mr. Ireland, and the jurors who tried Mr. Whitebread and the other four jesuits, found them all guilty. And my Lord Chief Justice Scroggs observed, that the prisoner's defence consisted only in catching at a point of time; and that it was most plain, a villanous plot was discovered. All which shews the fullness and satisfactoriness of the proof given by me and Bodloe. And, I must further observe, that though Mr. Ireland, by his false witnesses, pressed this matter as far as he could then, yet, when the jury brought him in guilty, the Chief Justice expressed the satisfaction of the court, and said, gentlemen, you have done like very good christians, that is, like very good Protestants.— And, at the trial of the five jesuits, the Chief Justice says, that the jesuits were very exact at catching at a point of time; but that was a thing which no man could precisely charge his memory withal; and therefore persuades the jury, that that should not be too strictly the measure of their judgments about truth and falsehood (the mistake of 7 or 8 days), and that they were not to lay too great a weight upon the point of time: Now if too great a weight be not to be laid upon a point of time, then this charge against me is of no weight at all. Besides, my Lord, it ought to be considered, that if this were the great

great objection then, and then answered, it ceases to be an objection now.

I shall offer the testimony of Mr. Bedloe, who is dead, and at his death confirmed all that he had sworn of the Popish plot to be true; and affirmed, he had rather spoken less than the truth, than more: And to this I desire my Lord keeper may be called, who took his examination.

L. C. J. It is very well known to the world, and particularly to a worthy gentleman who sits by you, (pointing to Mr. North) that Mr. Bedloe, when he was sick, did make some such protestations.

Then Mr. *Blaney* was sworn.

Oates. Pray, Mr. *Blaney*, see in your notes of Ireland's trial, if Bedloe did not swear, that Mr. Ireland was in town the latter end of *August*, 78.

Mr. *Blaney*. He said it was in *August*: He would not be positive to a day; but he thought it the latter end.

Oates. Then, my Lord, I desire Mr. *Jennison's* deposition of Mr. Ireland's being in town, taken before Sir Edmund Warcup, I may call some witnesses to make proof of.

L. C. J. We cannot admit that in evidence, unless the King's counsel will consent.

Oates. Then I shall prove what he swore at another trial.

L. C. J. Why, is he dead?

Oates. It has cost me a great deal of money to search for him, but I cannot hear of him.

L. C. J. Though in strictness, we should not admit such evidence, unless the party be dead; yet, if you can prove any thing he swore at another trial, we will indulge you so far.

Oates. Have you the record of Sir George Wakeman's trial, Sir Samuel Astry?

L. C. J. Put it in: And now, Mr. *Oates*, prove what you can.

Then Mr. *Oates* demanded of Mr. *Blaney*, if he could remember what *Jennison* swore at that trial; but Mr. *Blaney* could remember nothing of it.

Mr. *Oates* desired Sir Edmund Warcup might be examined about the deposition he took of *Jennison*, concerning Ireland's being in town the 19th of *August*: Which the King's counsel said they would consent to, if *Oates* would admit *Jennison's* letter under his hand to be read, wherein he owned he was mistaken in his whole evidence about that matter.

To which Mr. *Oates* consented; and Sir Edmund Warcup was examined; but he said, he had delivered the deposition to the King and council, and could not remember the particulars.

Then Mr. *Oates* called *Sarah Batten*.

He demanded of her, if her name was not Pain formerly; and, if she did not give evidence at Mr. Ireland's trial? But it appearing he was mistaken in the person, he examined her no further.

Mr. *Oates* called Mr. Percival, Mr. Vaughan, Sir Michael Wharton, and several others; but they did not appear: He said he had served them all with Subpœnas, but they would not come; and then he proceeded in his defence.

My Lord, both Bedloe and Sarah Pain have sworn, that Ireland was in town in *August*, as well as myself; and, I think, I am hardly used, that after witnesses are dead, or gone out of the way, I should have such a part of my testimony called in question. *Jennison's* evidence has formerly been made use of, and approved, as is well known to those who sat judges upon my Lord Viscount Stafford. And, my Lord, as I hope for salvation, all that I have sworn about Mr. Ireland's being in town, between the 8th and 12th of *August*, 78, and the beginning of *September*, is true; and though there are a great many witnesses produced against me

me this day, a great part of them do not come up to the 8th or 12th of *August*: And, I desire your Lordship will remark to the jury, what little credit these witnesses had at the trials of Ireland and the five jesuits: And, I believe, I am the first precedent, of a person's being indicted for perjury, for being a witness for the King, in such a case as this, after six years elapsed, and verdict upon verdict, and judgment and execution upon those verdicts; and when no new objection is offered, but what was then urged; and no circumstance occurs now, but what was as conclusive then, unless the change of the season. And at those trials all the judges of England were Commissioners of Oyer and Terminer; and fully debated and discussed these matters, and saw all these objections fully answered and confuted. Had I been witness in any cause but a Popish conspiracy, I had met with fairer quarter: But at this rate, it is safer for a Papist to be a traitor, than for a Protestant to discover a Popish plot. I hope you will consider my witnesses are either in places unknown, or, are such as, considering the times, dare not appear; yet, I hope, you that are sworn to do justice, will not suffer me to be ruined, by the false testimony of the Papists, who are parties; for they have a turn to serve, and are resolved to wreak their vengeance upon me: Now they have hopes of bringing in their religion, and would welcome it with my ruin: Their eyes now see what their hearts so long have wished, the death of a great man, who died lately, and against whose life they so often and so long conspired. Had this been their first conspiracy, the truth of it might have been disputed; but if you cast your eyes upon the reigns of Queen Elizabeth, King James, and King Charles, what can be averred against those numerous records of their conspiracies? And then surely, my discovery will not be deemed so improbable a thing. And I hope the jury will consider, that the men who

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are witnesses against me, their very religion is rebellion; and their principles and practices pernicious to our government. And, my Lord, if Coleman's correspondence with La Chaise, the French King's confessor, for promoting Popery in England, be considered, it is a demonstration of the plot, and sufficiently vindicates me.—My Lord, I have a favour to beg: I had but an ill night, and am now in great pain; I desire you would assign me counsel to argue the errors in yesterday's indictment; and give me a week's time to prepare and instruct my counsel: To which the court agreed; but told him, by the rules of the court, he ought to have but four days. Then he desired he might have liberty to withdraw; to which also the court agreed.

Then Mr. Solicitor proceeded to make his observations on the evidence, and the prisoner's defence, and said,

Gentlemen of the jury, you have seen between forty and fifty witnesses produced, to shew that it is impossible, that what Oates did swear can be true: He says, indeed, that this is in a circumstance of time wherein it is difficult for a man to be positive to a day; and that, it is usual with witnesses, in points of time, to swear with a latitude: But, gentlemen, should we grant this false doctrine to be true (and false certainly it is, and of most pernicious consequence it must be, if, when men are charged with things that depend upon time and place, the witnesses should not be kept to those circumstances) yet this, I say, if granted, can do him no manner of service in the case before you: For between the 3d of August and the 14th of September, which includes both times he swears to, and gives him a latitude of above twenty days besides, there is not a moment of time wherein his oath can be true.

Gentlemen, you have observed how the witnesses have given you an account of every particular day of both months, from

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the 3d of August, that Mr. Ireland left London, to the 14th of September, when he returned thither again. And, that their testimony might the more evidently appear to be true, they have given you such remarkable circumstances, why they remembered the particular times they swear to, as renders it impossible they can be mistaken. Then Mr. Solicitor summed up the evidence that had been given; after which he proceeds: And now let the world judge, if there be any room left to suppose, that any one word Mr. Oates has deposed can be true even allowing him that latitude of time he desires, and says all witnesses ought to be allowed: No, there is not a moment wherein he can verify one tittle of his evidence, as to Ireland's being in town; and this sure, I may call demonstration, that what Oates has sworn is utterly false. Gentlemen, the jury that tried Ireland had not this evidence: Indeed, some that went out of town with him, and one or two from Wolverhampton, were at the trial of the five Jesuits; but not more than five or six in all of the forty odd that now appear; and for want of these, Ireland unfortunately suffered: For so, I shall take leave to say, it was unfortunately.

And there is one thing Mr. Oates lays great stress upon, and would have you think he is hardly dealt with, because this prosecution has been so long delayed.— But, gentlemen, with sorrow we must remember, that there was a time when the city of London was so corrupted, that it was made a refuge and a sanctuary for high-treason: When the King could have no justice there, and men lodged themselves within those walls as a protection for their conspiracies. The time has been, when indictments were preferred, and the most convincing evidence given the grand jury, even to the satisfaction of all who heard it, and yet they have refused to find the bill; and not only so, but they were so abetted

by the rabble, that it was scarce safe for a Judge to sit upon the bench; and therefore it is no wonder an indictment was not preferred against Oates at that time, when the plainest proof against such criminals could not be admitted. This may give sufficient satisfaction why it has been delayed; and may caution every man, how they fall into the same circumstances again.

But gentlemen, you have heard the evidence to prove this fact: And it is plain to a demonstration, if you believe that Mr. Ireland was seen by these people at all, he was seen at those very times they have particularly declared: For, upon consideration of the circumstances, it is impossible it should be at any other times: And so I leave it to you to consider, whether the defendant be perjured, or not.

Then the Chief Justice proceeded to direct the jury, and observed, That every person that had been executed for the Popish plot, truly called Oates's plot, had to a man denied it at their deaths; and took it upon their salvations they were innocent: Whereas, there was not a man concerned in the Rye-House Plot, who had the confidence to deny it at his execution: And as to Mr. Oates's insinuation, that it was hard he should be brought to trial, after so much time elapsed; such were the misfortunes of those times, when these perjuries were committed, that even the fountain of mercy itself was stopped; and even that compassionate Prince King Charles II. was compelled to permit the execution of Ireland, against his inclinations, rather than give disturbance to his people; there having been a verdict and judgment in the case: But it was well known by them that were near his person, how often he expressed his concern for having consented to this execution; and that he reflected on it with regret to his dying day, as his Royal Father did on the business of my Lord Strafford: Nor ought these things to be remembered

remembered as a reflection on the memory of those Princes, but with infamy to those who were the causes of them. Unhappy was it for the Prince, when the times were so tumultuous, that he was compelled to restrain his mercy, where he thought it due, rather than seem to stop the current of justice: And as to Oates's objection, that the witnesses were Papists, it happened that seven or eight of them were Protestants: Not but he thought Roman Catholics good witnesses in point of law: And he was satisfied, lying was as much the talent of a Presbyterian, as it could be of a Papist. Nay (it was as inseparably incident to a Presbyterian) and such sniveling, canting, whining knaves, to lie, as it was to speak: That Oates mightily insisted, that, because he was believed before, it would cast a reflection on former juries to disbelieve him now: But if that opinion was to prevail, it was impossible perjury could ever be detected. The nation was then in a hurry and surprize; and it was not then supposed there could be such villains upon earth, as impudently to swear high-treason against their fellow-subjects, when there was no truth in the accusation. But the eyes of all honest men were now opened: They had seen the effects of their credulity; and it concerned them to shew their resentment to the world. And having summed up the evidence, he concluded in this manner: It is incumbent on you, gentlemen, to try these facts according to your evidence; and it is incumbent on us, who sit here as Judges, to see the law executed. And God forbid, but we should use our utmost endeavours to inflict the greatest vengeance, that the justice of the nation can permit us to inflict upon such villains, who have contracted so much mischief and reproach on us, and so much guilt upon themselves.

The jury withdrawing, returned in half an hour, and gave a verdict, that the prisoner was Guilty.

Mr. Oates's counsel afterwards moving in arrest of judgment, was allowed a considerable time to prepare his exceptions to the indictment; and being brought into court on the 26th of May, Mr. Attorney said, that four exceptions were delivered to him the night before by Mr. Wallop; but neither Mr. Wallop, nor any of the defendant's counsel, thought fit to argue them. The exceptions were these:

1. That a witness sworn on behalf of the King in a process of high-treason, cannot be punished for perjury by the King.

2. That it does not appear, that the indictments of Ireland, &c. found in Middlesex, were legally transmitted into London; and consequently, all the proceedings thereupon, were *coram non Judice*.

3. That the perjuries assigned, are foreign to the issue.

4. It is *Resolutio Signat'* in that part of the indictment, that mentions what the defendant swore; and in the perjury assigned, it is *Resolutio signand'*, which is no good assignment of the perjury.

To these exceptions it was answered by Mr. Attorney and the court.

1. That the first exception was a plain mistake of the indictment; for the defendant was not indicted upon the statute: And, at common law, he might be prosecuted for the King, though he was a witness for the King before: And that, if witnesses, who came and forswore themselves to take away men's lives, could not be called in question criminally for the King, (at whose suit only, a man could be prosecuted for his life, unless in case of appeals) it would be an encouragement to villainy, and make the process of law to become an instrument of the greatest cruelty in the world.

2. As to the second exception, that it did not appear, Ireland's indictment, &c. was well transmitted from Middlesex to London, that was well enough; for it being recited they

they were so, and so indicted, it sets forth, that the trials were had upon records there depending, before the Commissioners of Oyer and Terminer, and gaol-delivery: And it shall be intended, that they were well brought before them.

3. That as to the third exception, That the perjuries assigned were foreign to the matters in issue; it was apparent, that one of the indictments was in the express points of the great treason charged against them, viz. The consult on the 24th of April. And that for the other, the time was very material; because it was impossible that Ireland could be guilty of the treason sworn against him at his chamber in Russel-street, between the 8th and 12th of August, if he were not then in town. Nor could he be privy to the treason sworn by Bedloe, the latter end of August, or the beginning of September, in Harcourt's chamber, if he were out of town from the 3d of August, to the 14th of September.

4. To the fourth exception, that he swore he saw them sign it, and the perjury assigned is, that he did not carry it to be signed; they answered, that it was alledged that he falsely and corruptly swore that he was present; and that he carried the resolution to be signed, and saw them sign the resolution. Now, 1. It is said he was not there. 2. He carried no such resolution to be signed; and that there was no occasion to say he did not see it signed; for, if he was not there, nor did carry it, he could not see them sign it. Besides that, if any one part of the oath he swore proved false, that was sufficient to maintain the verdict; but here it was notoriously plain, that it was false throughout.—And my Lord Chief Justice said, That all the Judges of England had been consulted, that if the law

would admit of it, he might receive such a judgment for this offence, as might be adequate to the crime, and deter others from committing the like again.

That by the ancient laws of England, perjury was punished with death: That, afterwards, it was punished by cutting out the tongue. And now, by the unanimous opinion of all the twelve Judges, it was resolved, that by the law, crimes of this nature were left to be punished according to the discretion of this court, provided such judgment extend not to life or member.

Then, the Judges having consulted together, Mr. Justice Wythens pronounced the sentence, viz.

That the defendant should pay one thousand marks upon each indictment: That he should be stripped of his canonical habits: That he should stand in the pillory before Westminster-hall Gate, on the Monday following, for an hour, with a paper over his head, declaring his crime; but that, first, he should walk with it round all the courts in the hall.

On the second indictment, the judgment was, that he should stand in the pillory, the Tuesday following, at the Royal-Exchange: That the next Wednesday, he should be whipped from Aldgate to Newgate; and on the Friday following, he should be whipped from Newgate to Tyburn, by the hands of the common hangman: That the 9th of August, every year of his life, he should stand in the pillory before Westminster-hall Gate; the 10th of August at Charing-Cross; and the 11th, over against the Temple; and the 2d of September, at the Royal-Exchange; and on the 24th of April, every year, at Tyburn.

Sir THOMAS JENNER, Knt. his Majesty's Serjeant at Law, and Recorder of the City of London, moved for a Trial, in the Case between the KING and Mr. HAMBDEN, which was by the Court appointed to be on Wednesday the 6th of February, 1683.

Clerk of the Crown.

CALL the defendant John Hambden.

Mr. Williams. He appears.

Cl. of Cr. Gardez votrez Challenges. Call Sir Charles Gerard.

Cryer. You shall well and truly try the issue between our Sovereign Lord the King, and John Hambden, Gent. and a true verdict give according to your evidence, "So help you God."

Sir Charles Gerard, Jur^r

Cl. of Cr.

Roger Jennings, Esq. Jur^r

Henry Hodges, Esq. Jur^r

Joshua Galliard, Esq.

Williams. We challenge him for the defendant.

L. C. J. [Sir George Jefferies] What is your cause of challenge?

Williams. If your Lordship please to let him go through the pannel, we will shew cause if there be not enough left without him.

L. C. J. No, shew your cause now, it being against the King.

Williams. He has an employment under the King, he has an office in the forest, and that we say is our cause of challenge.

L. C. J. What then if he have.

Williams. My Lord, we suppose then he is not an indifferent person to try this cause.

L. C. J. Ay, let me hear that now proved and defended by any gentlemen of the long robe, that that is a good cause of

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challenge. Shew me what law there is for it.

Williams. To be of the King's robe, or pay, or salary, is an exception in any case wherein the King is concerned.

L. C. J. Shew me any law for that if you can, Mr. Williams, I know you are a lawyer.

Wallop. It is the opinion of my Lord Coke in his Institutes, that it is a good cause of challenge.

L. C. J. But there is the opinion of all the Judges in Henry the Fourth's time against it.

Wallop. It is, my Lord, fol. 156.

L. C. J. But I can cite you three or four books, and you have them all together in Roll's Abridgment, "Title Challenge," where he sets down four books one after another, that it is no cause of challenge, even to be the King's tenant, and there is a great deal of reason for it. For, if that were a good cause of challenge, mark the consequence, then all persons that hold lands in England hold them mediately or immediately of the King, and so the King could have no freeholders to be jurymen in his cause.

Williams. This is a more special cause of challenge than that.

L. C. J. What can be greater than that of being the King's tenant?

Att. Gen. [Sir Robert Sawyer] Especially when all the land of England was held of the crown, as originally it was.

Trevor.

Trevor. My Lord in 2d Rolls 646. Tit. Tryals, there is the express opinion of my Lord Rolls, that to be of the livery, or a menial servant of the crown, is a good cause of challenge.

L. C. J. And look you but in the 1st case in the 1st part of the Abridgment, "Title Challenges," where he mentions three or four books to the same purpose, and 'tis quite otherwise.

Williams. My Lord, in that of 1st Rolls, he only cites some books, but the other is his own opinion.

L. C. J. Well, make out your fact if you have a mind to it; but it is well known, that neither Mr. Serjeant Rolls, nor my Lord Coke, when he delivered that opinion, are to be reckoned such authorities in crown matters.

Williams. We will ask him, my Lord, if you please, I suppose he will not deny it.

L. C. J. No, make out your fact if you will have any benefit by it, 'tis only a challenge to the favour, which ought not to be in the King's case. I am very glad that we are now to debate this matter with men of the robe, because we have had a strange sort of notions and reflections spread abroad of late, as though the Judges now-a-days gave strange sort of opinions, and as though persons that had been blemishes at the bar, were preferred to do strange things when they came upon the bench; but truly I wonder to hear that it should be a doubt, when at the same time that which we gave as our opinion about one particular challenge, that is as to freeholders, it was the judgment of all the Judges, that that was no challenge, and all the counsel that were concerned in that case know it was the opinion of all the Judges. But now if we meet with lawyers, I shall be glad to have the matter fairly argued and debated, and pray shew me what law or reason is for it.

Wallop. Certainly, my Lord, there is a great difference betwixt the general allegiance of all men, and so of a general tenure, and the dependance of any particular person who is a menial servant, and receives wages of the King.

L. C. J. I would desire to know of you, Mr. Wallop, which is the greater challenge, to lay such a one is tenant, or such a one is immediate servant to J. S?

Wallop. There is a great difference, my Lord, I think, between an immediate tenant, and the general tenure of all subjects.

L. C. J. But certainly the law is thus, if he were an immediate or a mediate tenant to any but the King, if his Lord were party to the suit it would be a good challenge, but the being tenant to the King is no good challenge in the King's case.

Williams. My Lord, I take it, the act of Parliament that takes away the court of wards and liveries hath altered the law as to that matter of tenure; for now we hold in socage, and that other tenure is destroyed that was between the King and his subjects.

L. C. J. But pray how comes it to be a challenge now that was not one before? Does that Act of Parliament make it a good cause of challenge? If it does, shew it. I tell you the old books are against it.

Williams. I speak, my Lord, to the tenure, that that is nothing at all now to be objected, because all is now in socage.

L. C. J. I would not have Mr. Attorney insist upon a juryman, but yet with-all I would not have it gone away with as law, that it is a good cause of challenge.

Wallop. My Lord, we finding in some cases that are in our books, that it is held to be a good cause of challenge, lay it before the court.

Att. Gen. How many hundred errors do you find in my Lord Coke, notwithstanding all his learning?

L. C. J. I

L. C. J. I say, if I was Mr. Attorney, I would not contest for any particular man to be a jurymen, I speak that as my advice, but I would not have it taken for law, nor would I have it broached abroad, that though the Judges now were of one opinion, yet the law truly was of another.

Mr. Jones. If all that receive salary, or wages from the King, are not to be jurymen in the King's causes, then all the Deputy Lieutenants and militia officers, which generally are the most substantially freeholders, are excluded from being jurymen.

Just. Withins. Who will say so, Mr. Jones? No lawyer in England surely will say so.

Williams. Offices where there is no profit, will not be the same exception.

Att. Gen. But he is no menial servant of the King's.

Williams. What is he then?

Wallop. We hear that he is keeper of one of the King's forests, and has a fee for it.

Williams. Well, we will ask him upon a *voyer dire*.

Att. Gen. My Lord, the fact is quite otherwise, and I desire they may make it out.

L. C. J. Truly, I think 'tis not *tanti* to insist upon any particular man, but I find we are in an age that is so full of cavils, that if we act but according to the precedents that went before us, we are thought to act as originals, and to make new laws, when we only follow the rules that we have received from our predecessors. And I say there was no such challenge at common law, that ever I read of in any of our books, nor is it any challenge by the best authorities extant.

Mr. Jones. I desire them to shew me any such precedent, that any man was challenged by one that was tried at the suit of the King, for a challenge to the favour,

but we must do unprecedented things, or else there will be no satisfying of some men.

Att. Gen. I would fain know, what one opinion in a straggling book is against the current of all our law?

Williams. Which do you call a straggling book, Mr. Attorney? My Lord Coke's Institutes, or my Lord Roll's Abridgement?

L. C. J. I say the better opinion of the books is on the other side, and the greater number too.

Att. Gen. First of all, I do know of my own knowledge, he is no menial servant.

L. C. J. Mr. Attorney, I do debate it for learning sake, truly I know not the man, nor whether he be the King's servant, or not, but I speak against allowing the challenge, that if he be let aside, it may not be taken as a precedent, and so pass for law, that the King's servants can't be jurymen. I would have you quit the man by content, but not as a force-put, as though the law were so, for the law, I think, is otherwise.

Att. Gen. He is none, my Lord, they mistake.

L. C. J. Nay, I know nothing of the man, I tell you only what I think.

Wallop. He receives wages, or a fee from the King for his office.

Just. Withins. I would never, for my part, while I live, nor never did, while I was a practiser, stand upon any particular jurymen.

Att. Gen. He may be a jurymen by law sure.

L. C. J. There is no doubt of it, Mr. Attorney.

Att. Gen. My Lord, if your Lordships have given your opinion, I desire he may stand by.

L. C. J. Well, Mr. Attorney waves him, let him stand by.

Att. Gen. But for no reason that has been offered.

L. C. J. No,

L. C. J. No, no, I don't hear any thing of reason offered for it.

Cl. of Cr. Mr. Galliard. You may go down.

Thomas Harriott, Esq. Jur'
Thomas Earsby, Esq. Jur'
William Avery, Esq. Jur'
John Sharpe, Esq. Jur'
Richard Shoreditch.

Williams. We challenge him for the defendant.

L. C. J. What is your cause of challenge?

Williams. There is the same exception to him.

L. C. J. If Mr. Attorney will consent, with all my heart.

Att. Gen. No, we humoured you in one, we won't humour you any more.

Williams. Nay, here is something more clear for us, he is a Serjeant at Arms attending his Majesty.

Just. Withins. You know our opinions already, Mr. Williams, unless Mr. Attorney consent, we can't do it.

Williams. We only acquaint Mr. Attorney with it; we must submit to your rule; he is certainly Serjeant at Arms, he came in the place of Dereham that let my Lord Grey escape.

Att. Gen. Pray prove it, I don't know it for my share.

Williams. Will you ask him the question?

Att. Gen. Pray prove it. Are we to gratify your client? Pray, let him better instruct his counsel.

L. C. J. If Mr. Attorney consent not, then he must be sworn.

Att. Gen. If there be enough without him that do appear, let him stand by.

Cl. of Cr. Stand down, Mr. Shoreditch.

Charles Good, Esq. Jur'

Att. Gen. That it may appear how fair things were carried, they would not strike out one of these men when they came before the Protonotary, as they might have done.

Just. Withins. Truly that was not well.

done, to trouble the court when you might make your exceptions there.

Williams. We did not know it then, now we do, we offer it to the court.

Cl. of Cr.

Samuel Rouse, Esq. Jur'
Hugh Squire, Esq. Jur'
Nehemiah Arnold, Esq. Jur'
John Bifeild, Esq. Jur'

Then the Jury were numbered, and the twelve sworn were these.

J U R Y.

Sir Ch. Gerard, Bart. John Sharpe, Esq.
Roger Jennings, Esq. Charles Good, Esq.
Henry Hodges, Esq. Samuel Rouse, Esq.
Tho. Harriott, Esq. Hugh Squire, Esq.
Tho. Earsby, Esq. Neh. Arnold, Esq.
Will. Avery, Esq. John Bifeild, Esq.

Cl. of Cr. Gentlemen of the Jury, you that are sworn, hearken to your charge. The defendant John Hambden stands indicted by the name of John Hambden, of the parish of St. Giles in the Fields, in the county of Middlesex, Gent. (*Prout in the indictment, mutatis mutandis*)—To this indictment he has pleaded not Guilty, and for his trial puts himself upon the country, and the King's Attorney-General likewise, which country you are, your charge is to inquire whether the defendant be guilty of the great Misdemeanor whereof he stands indicted, or not guilty; if you find him guilty, you are to say so; and if you find him not guilty, you are to say so, and no more; and hear your evidence.

Then proclamation was made for evidence in usual form.

Holloway. May it please your Lordship, and gentlemen, you that are sworn, I am of counsel

counsel for the King upon this indictment. Gentlemen, the indictment sets forth, that the defendant being a seditious, malicious, evil disposed person, and seditiously and maliciously intending to disturb the peace of the kingdom, the last day of June, in the 35th year of his now Majesty's reign, and divers other days and times, at the parish of St. Giles in the Fields, in your county, did unlawfully assemble, and confederate himself with divers evil disposed persons, subjects of our Lord the King, and then and there, with those other persons, did falsely, maliciously, and seditiously consult and conspire to make an insurrection in the kingdom of England, and to provide arms and armed men in divers places of the said kingdom. And the better to compleat his evil intentions, the said last day of June, did consult and agree to send certain persons, to the jurors unknown, into Scotland, to invite several evil disposed persons there to join in this conspiracy. This is the substance of the charge, and to this he says, he is not guilty; if we prove him so, we do not question but you will find it.

Att. Gen. May it please your Lordship, and you gentlemen of this jury, Mr. Hambden stands indicted of an high misdemeanor, for conspiring with several others, to raise rebellion within the kingdom, and to crave the assistance of the brotherhood of Scotland. Upon the face of the indictment, gentlemen, it appears to be a very high crime, and the matter of this indeed has been formerly in examination in other trials, and yet the party you may observe do not acquiesce in those trials, but think the persons accused lay under very great hardships, and that to a very great degree, as not having the advantage of counsel, nor to have their witnesses examined upon oath; and therefore, gentlemen, the King is pleased to go less in this case than in the others, that this gentleman, who is now before the court, may clear his innocence, if

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he has any witnesses to do it. And if there be any advantage that the having of counsel can contribute to his cause he has that allowed him too.

The course of our evidence, gentlemen, will be this.

We shall prove to you that Mr. Hambden, with five other persons (I shall name them) the Duke of Monmouth, my Lord Russel, Mr. Sidney, my Lord of Essex, and my Lord Howard, they met several times (the particulars we shall give you an account of) one was at Mr. Hambden's house, another was at my Lord Russel's, where they did contrive together, and took upon them to be a juncto, or a council of six, collected out of the wisest men of the kingdom, to consider how they might better the affairs of the nation, and how they might make a stir: for they thought there was no way possible otherwise of doing it, but by their joint counsels to carry on a rising. And that they might do it the better, they resolved to crave the assistance of Scotland. Gentlemen, we shall give you an account of their consults and debates, and shall shew you, that at length they came to a resolution, that the rising was to be carried on jointly in London, and the several parts of the kingdom, in several countries at once. Then they came to think, and consider whether it were not best to send into Scotland, to draw them in too. And thereupon it was agreed by this juncto, that they would send thither, and the management of it was committed to Mr. Sidney, to send some fit person into Scotland, to treat with the malcontents there; and the better to carry on this joint design, some of them were to come up to London. And they were to have a pretence to treat about going to Carolina, and the purchasing some shares in the plantation there, of which my Lord Shaftsbury was a chief governor. We shall prove to you, gentlemen, besides all that I have opened, that the person to whom that trust

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was

was committed, Mr. Sidney, according to the duty that he had taken upon him, does employ one Aaron Smith, which all that know him, do know him to be a fit engine for such counsellors, and a fit instrument for such a conspiracy. We shall prove he actually was in Scotland, and that he went into Scotland upon this errand. And then we shall prove, that those gentlemen that were sent to, and were the persons named in their consuls to be treated with, came here soon after to town, and as soon as ever this plot was discovered, they fled and absconded themselves. Gentlemen, if we shall prove all this matter to you, I think it will be without any question clear, that this gentleman is notoriously guilty of this high misdemeanour. And indeed, if you observe it, one of the persons has given judgment against himself, the Earl of Essex. But the party have been so diligent and officious as to sing that upon the government; but that matter we shall have before the court in judgment to-morrow. For two of the others they have received the judgment of the law; for two more of them, the King has been pleased to take them into his mercy; the one is my Lord Howard, who is summoned to appear here to-day; the other is the Duke of Monmouth, who has confessed all this matter and has taken his pardon, and we have summoned him also to be here this day; that the world, if they will have their eyes opened (I mean the discontented world) may see there is nothing sought, but the peace and quieting of the kingdom.

Gentlemen, if we prove all this matter to you, I shall be glad to hear the defence of the counsel, and the defence made by witnesses upon oath.

Sol. Gen. [Mr. Finch.] My Lord, we will call our witnesses, and first we begin with the Duke of Monmouth.

Att. Gen. Call James Duke of Monmouth.

Cryer. James Duke of Monmouth.

Att. Gen. Call him again.

Cryer. James Duke of Monmouth.

L. C. J. Was he served with a Subpoena?

Att. Gen. My Lord, we will prove we have served him in all places where he was like to be met with; that we left Subpoena's with his servants, who promised to deliver them to him.

L. C. J. Prove it.

Att. Gen. Where is Mr. Atterbury? Swear him (which was done.) Pray will you give the court an account, whether you did serve the Duke of Monmouth with any Subpoena? in what places you were to serve him, and who you left it with?

Atterbury. My Lord, on Friday last was se'ennight, I was commanded by Mr. Attorney General, to carry a Subpoena to serve upon the Duke of Monmouth, and to go to his house at Moor-Park, where it was generally discoursed he was. I did go and take a Subpoena from Mr. Burton, by Mr. Attorney's order, and went to the Duke's house at Moor Park. When I came there, the outward gate was locked, and I went to an house where the keys are kept, and having got the keys, I went down to the house, and I saw there one of his servants sothering of cattle; and coming up to him, I asked him if the Duke of Monmouth was in the house? He told me, he could not well tell, whether he was or no, but he thought he was gone to London, for he saw the calash, and five or six horsemen with it, and they said in the house, that it was the Duke that was gone to London. I asked if there were any servants that were nearer to his Grace in the house, that I might speak with? They said, yes, there was the housekeeper or steward, one Mr. Rawkins, that attended upon the Duke. I desired to speak with him, and he came out to me; I asked him if the Duke was there? He seemed to be unwilling to give me an answer.

swer. I asked him the second time; but he did not say he was, or he was not. I told him then, I had a Subpoena, which I brought with me by Mr. Attorney General's order, to serve upon his Grace, which was to require him to attend here this day, to testify his knowledge, in a case between the King and Mr. Hambden. He told me, Sir, said he, give me your Subpoena, and I will take care the Duke shall have it. He took it of me, and I came back to London presently. As soon as I came to town, I had a second Subpoena given me to serve upon his Grace, with which I went to the Duke's house at the Cockpit.

When I came there, I spake with the porter, I think his name is Johnson (but the porter he is, and I remember him a servant there many years) I asked him, if the Duke was there? He told me he did not lodge there. I told him I had a Subpoena to serve upon his Grace to appear as this day, the same as I said at Moor-Park. Says he, Mr. Atterbury, I will take care the Duke have it to-night, or to-morrow morning early.

L. C. J. When was this?

Atterbury. It was of the same day, Friday was eight night last. I was told afterwards by one that I met with, that the Duke did lodge at Mr. Row's house, who is a servant to the Duke, one of his gentlemen. He lives in the Pall-mall, it is either his house or his lodging, but they call it his house. I had a third Subpoena given me to the same effect. And when I came there, I asked for the Duke, and a woman came to the door, Mrs. Manley (I think they call her) she seemed to make little answer to what I said. Said I, will you give this Subpoena to the Duke, or to Mr. Row to give it the Duke. She took it of me, and said, she would give it Mr. Row certainly to give to the Duke. And yesterday, or the day before, I met Mr. Row at Whitehall, and says he to me, Mr. Atterbury, you brought a Subpoena to my house a

little while ago? Yes, Sir, said I, I did, had you it? Yes I had the Subpoena, says he. Then, says I, I hope you gave the Duke it? To that he made me no answer, but nodded his head, and smiled, and went away.

L. C. J. Now call his Grace again.

Cryer. James Duke of Monmouth. [But he did not appear.]

Att. Gen. Call William Lord Howard. (Who was in the court.) Pray swear my Lord Howard. [Which was done.]

Att. Gen. My Lord Howard, pray will you give the court and the jury an account, what you know of any meeting by the gentleman that is now accused, and the Duke of Monmouth, my Lord Russell, your self and others, and when? Tell what you know.

Lord Howard. My Lord, in January last was twelve month, about the middle of January I was called out by Colonel Sidney, being then in my lodgings in Southampton street, and carried by him to Mr. Hambden's house, I do not know what they call the street, but the same side of the way with the fine house that is in Bloomsbury.

James. By my Lord Montague's house that now is, you mean?

L. Howard. Yes, of the same side of the way. When I came there, there was my Lord Russell, and the Duke of Monmouth, Colonel Sidney and I went together, Mr. Hambden was then in the room where they were. Afterwards came in my Lord of Essex, this made up six. When they were there, we fell into discourses.

Att. Gen. Pray, my Lord, before you come to tell the particular discourses, give an account how, and upon what grounds you came to have this junto of six?

L. C. J. If you please, my Lord, pray give an account of the preliminary passages.

L. Howard.

L. Howard. My Lord, after the disappointment given to an undertaking that was begun by my Lord Shaftsbury, which was in October or November before, in November he died. After that, truly I cannot say, but that Colonel Sidney and myself might be, and were the two first that did give the rise to it. For being in discourse, we said it was absolutely necessary that there should be some council erected to give some steadiness to the motions—

L. C. J. My Lord, I would not willingly interrupt you. But you seem to speak of a disappointment given to an undertaking by my Lord Shaftsbury. Pray what was that undertaking?

L. Howard. Your Lordship has heard of that before, and know it very well.

L. C. J. Though we know it, the jury do not. They have not heard it judicially at least.

L. Howard. Because it has been in the printed books, every body, I suppose, knows it.

L. C. J. But that they cannot judicially take notice of.

L. Howard. That is something a long history, my Lord.

L. C. J. Though it be, we must hear it.

Att. Gen. Pray make it as short as you can, my Lord.

L. Howard. So much as I can give account of is this. It was about the day after Michael's day that I came to my own house having been before in Essex, and that I think was Saturday. The Monday following Captain Walcot came to me and dined with me, and after dinner told me, my Lord Shaftsbury had left his house, and had betaken himself to a private lodging, and had hid himself from the rest of his friends; but had a great kindness for me, (which kindness truly I wish he had spared) and desired to see me, I took time to consider of it; but I bid him go back

to my Lord Shaftsbury, and tell him, if he had any thing of an extraordinary nature to acquaint me with, I would come and assist him all I could. He came the next day again, and shewed me to my Lord Shaftsbury's lodgings: He lodged then at one Watson's house, a citizen, I know not what street they call it; but it was in a little street by Woodstreet. And when I came to him, I found my Lord Shaftsbury very much differing from what he used to be, which was more cautious, and presently he fell to tell me, that he was forced to withdraw himself from his own house, for fear of being attacked again by sham-charges and plots, and false evidence, as he had before: For now he said, he saw they had the possession of all juries, by having those sheriffs which were imposed upon the city, as he said, and he could not think his own life or any man's life safe; for to be accused was sufficient to bring his life into very great danger, and for that reason he had withdrawn himself to that private retirement; and being there he was resolved to make some speedy push, for recovering of the liberties of England, that there was preparation made in the city of several thousands of men, that were all in readiness to rise, and that for his part, he was resolved to be set on horseback; for get on horseback he could not; and that there were great numbers that were ready, when he did but hold up his finger, to be drawn together at any time: That divers had been drawn out of the country to join with them by insensible parties of horse, I think he named about fourscore or an hundred. Which since I found were to be headed by Colonel Rumsey, upon the day of making and declaring the sheriffs; but finding there was nothing done, he withdrew himself and his man thither; but there was such a general preparation in the city, that if some Lords did not unhandsofly desert them, they should be in readiness for action quickly.

quickly. I asked him who he meant? He told me, the Duke of Monmouth and my Lord Russel had very unhandsomely deserted him; for they had promised and undertaken to be in readiness with men out of several counties in which they had an interest, he named Somersetshire, Devonshire, and Cheshire, I think, and that my Lord Grey should be disposed of into Essex to do the same there, and if they had held on this resolution, it had been such a sure game, that it could not have failed: But, says he, they are started, and say they cannot be in a readiness to do it. My Lord, I very much wonder that those persons you named should engage in any design, and fail of performing what they promised! Says he, I will assure you it is so. And so he proceeded to speak several sharp things of the Duke of Monmouth, upon the account of his ambition, that he thought to have all under his command: Which was a secret lurking ambition in him, that he said, he always suspected the Duke to be guilty of. And now he, found his suspicions true. That unless he might command all, he would do nothing. But for his part, since he found the matter so, he was resolved to go on alone, rather than fail in his design. Said I, my Lord, I should be very forward to concur with you in any thing; but I wonder your Lordship should step into an action of such danger, thus divided from those that are most likely to assist you in it. I cannot help it, said he, I have left my house, and must go on. My Lord, said I, pray give me leave to go to the Duke of Monmouth, and expostulate the matter with him, and I will come and give you an account again. Says he, it is to no purpose, I dare say. Said I, my Lord, pray let me go and try, for I would not have you divided, but I will promise you this, I will not tell him I came from you, but as from myself discourse it with the Duke. Well, said he, if you will you may. This

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was upon Tuesday, I think the third of October, the third or fourth. So I went to the Duke of Monmouth the next day, which was Wednesday, and finding him not at his house in Soho, and being told he was at Moor-park, I took an occasion to go to Moor-park, and I came there a little after dinner, and took him aside, and told him all this that I now have spoken about my Lord of Shaftsbury. Says he, I think the man is mad, what does he mean? We did undertake to do this, it is true; but not by that time he speaks of, and things are not ready, I know not what his own fears make him do; but he does act so preposterously that he will undo us all. Said I, my Lord, all that I shall desire is, that there may be an interview betwixt you, and discourse the thing with one another, or else it may be a thing of very fatal consequence for him to step into an action of this danger and concern while you are thus divided. With all my heart, says the Duke, I would have nothing more, I desire to speak with him. This made me recoil back again to my Lord of Shaftsbury the next day, and I told him all this, and desired he would give a meeting, says he, I see they are false then to say they did not engage, they were engaged, and that against this time too, the confirmation and swearing of the sheriffs; and now for me to meet with them, I know I shall run out into passion and anger, and therefore it is better omitted. Said I, my Lord, I must positively insist upon it. I must have an interview between you, for it is a madness for you to go on thus divided, in so great a business, I could not prevail, he would not, but he told me, if I would I might go to them from him, and let them know I had been with him; (for before I pretended to have it from a third hand, and not from my Lord himself,) and if they would be in a readiness with what they promised, from the country, he would ask nothing from the city, he would take that

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place

place upon himself, if they would perform their engagement for other parts; but he resolved to go on. So I went to the Duke of Monmouth's again, and told him what he said, that I could not by any means get him to an interview. Says the Duke, he is a strange man, I know not what to do with him, we will all be in a readiness as soon as we can; but it is impossible to do it so soon. I went to my Lord of Shaftsbury again on the Saturday, and did then positively engage him that he would give a meeting to me, and the Duke of Monmouth, and some others. And we appointed time and place, he appointed to come out in a parson's habit, and a black periwig to his own house, which he thought the safest place, because he would not discover his lodging to any of them, for fear it should come to be known. With these instructions I came to the Duke of Monmouth to prepare about it, and proffered him to be ready the next day at evening with my Lord Russel to go to him. All this while I had not spoken to my Lord Russel, but only to the Duke of Monmouth. And the next day when I came from church to my own house, there met me a message from Colonel Rumsey, who I understood by my servants had been there, and left his name. With this message, that he came to tell me, the gentleman that was to meet could not meet. This was so confused a matter, that I was impatient till I knew the meaning of it. I took my coach and went directly to the Duke of Monmouth's again, and he told me, Colonel Rumsey had been with him, and told him, my Lord of Shaftsbury was apprehensive there were a great many Tories about his house, and he feared being discovered, and therefore had removed his lodging, and so could not meet; but we should hear from him in two or three days. So that was the last time that I saw my Lord of Shaftsbury, or indeed in a direct line

did hear from him; collaterally by Walcot I did afterwards hear, but by this means we were at a loss. After this the Duke of Monmouth did tell me (for he did not own to me that he saw him, but indeed swore to me that he did not see him; but I find since he did,) that he would do what he could, to prevent an untimely dangerous undertaking. But after this it seems they had a meeting at Mr. Shephard's house, where my Lord Shaftsbury sent a message to him and my Lord Russel; but the Duke of Monmouth only told me, that my Lord Russel had met with him, and seen him; but he never owned that he had met him himself or seen him. About four or five days after, Captain Walcot came to me, and told me, such a day was set for the rising. Upon which being startled, I had nothing to do, but recoil back to the Duke of Monmouth, and endeavour to stop any rash proceedings, and it was stopped as I thought, and so it continued for two or three days, and at that time, which was in October, there was a rumour up and down whispered, as if something would be attempted; but what it was we did not know, but thus it went on for two or three days, and then it meeting with a disappointment upon the consultation at Mr. Shephard's, my Lord Shaftsbury took up his resolution to be gone, and went away to Holland, and died in Holland. This is the substance of that account which I can give of those former transactions.

Att. Gen. Now give an account of what was subsequent to this.

L. Howard. This was in November. After this there being frequent conferences between Colonel Sidney and me; for Colonel Sidney by the way knew nothing of all this, and I was cautioned by my Lord Shaftsbury, that I should not tell my friend Sidney any thing of it, and asking him the reason why I should not? Says he, I cannot well tell, but you will wonder when I tell

tell you, that his own friend Major Wildman has barred him and would not let him know it. The gentleman is now dead; but I will assure you he did know nothing of this for a month after: For he was gone into the country; but after my Lord Shaftesbury was dead, I told him the history of all these transactions, which he was before a stranger to. After this, when I had acquainted him with what had been intended in London, and what preparations had been made, and how what was intended had been suppressed, and in what posture affairs then stood. We then took up a resolution to form a council, that might for the time to come give such directions as might regulate the motions of this affair. Thereupon we began to think of the persons who they should be. He undertook to speak to my Lord of Essex and Mr. Hambden, and I was to bring the Duke of Monmouth to a right understanding with him in it. So I went to the Duke of Monmouth, and told him Colonel Sidney did present his service to him, and would willingly wait on him, but that he thought it would do him hurt, because he was a person of such note, and thereupon so obnoxious that it might prejudice him to have seen him to come to him; and therefore if his Grace would please to appoint any third place, he should be very glad to kiss his hand. Says the Duke, I do not know any where truly to appoint. Why then, said I, I will tell you a place: Let us e'en go to his house (having before prepared Colonel Sidney for it) and take him by surprise and dine with him, and then there will be the less suspicion. But, said I, you must not expect to be treated as the Duke of Monmouth, because he does not expect you; but take him as a philosopher, and dine with him as he uses to dine at his own table. Says the Duke of Monmouth, I care not for entertainment; I will go with you: And there at that time did the Duke

of Monmouth undertake to bring in my Lord Russel, and my Lord of Salisbury. This was the only discourse preparatory to it that ever I knew of. Within a fortnight or three weeks after; nay, I think it was less than ten days after, Colonel Sidney came to me, and told me, my Lord of Essex was very forward in it. The Duke of Monmouth would prepare my Lord Russel, and my Lord Salisbury; and he himself did not doubt, but Mr. Hambden was very willing to be in it too; and they had appointed a meeting at Mr. Hambden's house, and he would carry me thither to the house; and this was the first meeting that I knew of; and there we met all six.

Att. Gen. About what time was that?

Lord Howard. It was about the middle of January; and truly I think I could reduce it to a certain day or two by the persons where I lodged.

Att. Gen. What was debated there?

L. Howard. When we came there every one discoursed what he would. There was a discourse of the time and places where to rise; but among other things it was resolved as a principal point, that there should be a preparation made for the design, by a treaty with those of Scotland, and an understanding settled with Argyle, and a messenger sent to my Lord Argyle and others. And before this was done, we could not be ripe for any resolution: But this must be speedily done.

L. C. J. Pray, my Lord, give me your favour, I would not interrupt you; but to make things clear as we go, I desire to ask you, when you came first to Mr. Hambden's house, who spake first, when you were all met together?

L. Howard. Every body discoursed what they pleased.

L. C. J. But who gave an account of the reason of the meeting? Will you please to

to recollect, and tell what you know, who began the discourse?

L. Howard. Something introductive to it was said by Mr. Hambden, we being at his house, as 'tis natural to conceive for any gentleman at whose house people are met, to say, pray let us sit down, and talk of our business. Something leading and introductive was said by him.

L. C. J. Pray, my Lord, as near as you can remember, will you give an account what was the thing; he began to discourse of? Did he seem to take any notice, or have any knowledge of your meeting, and other things before?

L. Howard. It was a general hint, and intimation to us of the ends of our meeting, that we were there come to consult and advise one with another, how to put things into a better method and posture than formerly: And he desired that we would sit down and discourse of these things. My Lord, I would not charge myself with particulars positively.

Att. Gen. Upon what questions did you debate and consult, my Lord?

L. Howard. Those were started severally. Some would speak of the time when it should be, whether it were not convenient now, or when? Others offered something concerning the places, whether it should be begun in the city or in the country, or both together. Others took it into consideration, what persons were to be prepared in the several countries to be assisting in it, that were probable to carry it on. And then some discoursed concerning the raising of money, and then what sum should be raised, and I think that was started by the Duke of Monmouth; but I am sure the sum that he named was twenty or thirty thousand pounds. The last thing that was talked of, but which was concluded to be the thing principally to be taken care of, was the settling such a concurrence and correspondence with Scotland, that they

might chime in at the same time, that so we might give as many diversions both from home and abroad, as could be at one and the same time.

Att. Gen. My Lord Howard, did Mr. Hambden discourse of this matter?

L. Howard. I cannot speak to the discourse of any one in particular; for I cannot say it was put to the vote as we formerly expressed it, but it may be said we were all consenting and concurring.

L. C. J. Did any of you dissent from the rising?

L. Howard. No, no, my Lord.

Att. Gen. Did any of you oppose it at all?

L. Howard. No, no, that was discoursed of as a thing resolved.

L. C. J. I ask you this question, my Lord Howard, Was there any sort of complaint made of the government, that it was uneasy and that occasioned you to enter into these debates?

L. Howard. There was, I cannot say a complaint, because there was no person to complain to; but it was spoken of as a matter of great grievance, that such a force and violence should be put upon the city in their election of officers, and the tendency of that as to all injuries, though I cannot distinctly remember the particular things.

L. C. J. You say you were talking of a messenger to be sent into Scotland, to my Lord of Argyle; and others, to chime in with you in this matter as you say, pray did you come to any resolution about that, and what did you resolve upon?

L. Howard. That there should be one only at that time. And afterwards it was the matter of the debate at the next meeting, which was that meeting at my Lord Ruffel's, which was about this time twelve-month in February some time.

Att. Gen. How long after the first meeting at Mr. Hambden's was that?

L. Howard

L. Howard. My Lord, I think it was about a fortnight.

Att. Gen. Who was there?

L. Howard. The same persons that met before. But then there was little spoken of but the business of Scotland.

L. C. J. Was Mr. Hambden there at the second meeting?

L. Howard. He was there.

L. C. J. At my Lord Russel's you say it was?

L. Howard. Yes.

Att. Gen. What resolution did you come to then?

L. Howard. Then we came to a resolution that somebody should be sent, and we began to discourse who was fit, and Colonel Sidney he propounded Aaron Smith, to some of the company he was known, to others not; but those that did know him, did approve of him as a fit person.

Att. Gen. To whose province was that committed of sending this person into Scotland?

L. Howard. Col. Sidney undertook it himself.

Att. Gen. Did the rest consent to it?

L. Howard. Yes, nobody did oppose it, but left it to him.

L. C. J. Did you name the person then that was to go?

L. Howard. He was not so named as to be with any solemnity approved or disapproved; but it was left to Col. Sidney to manage it, and he naming Smith as a fit person (he told us that by the by not to put it to the question for our approbation) and some of us knew the person, others did not. I was one that did know him, and did think him a very fit man to send.

L. C. J. Pray, my Lord, who was the person? Be pleased to tell the jury so as they may know it.

L. Howard. Aaron Smith.

Just. Wilbins. Had you any discourse with Col. Sidney, my Lord, afterwards that he was sent?

L. Howard. Yes, my Lord.

L. C. J. Pray give an account of that.

L. Howard. About three or four days after this meeting at my Lord Russel's, I went to visit Col. Sidney at his house, and while I was there in the room, he went to his cabinet, and out of a drawer where there were five or six hundred pounds in gold as I could guess, he took a good many pieces, I do not know directly how many; but he took out so many as he said were threescore guineas that he was going to carry to Aaron Smith, I went not in my own coach, and therefore went away with him in his coach, and he set me down at Southampton-street at my own lodging. I went no further, but he did, and he told me afterwards it was conveyed to him, and that he did go.

L. C. J. How long was that after your meeting at my Lord Russel's, where you say you intrusted Col. Sidney to send one into Scotland?

L. Howard. I think it may be less than a week, four or five days, that I saw him carry the money. After this he said, he had given him this money, and was gone. And when he was dispatched, in a week after I was making enquiries after him, and Col. Sidney said, he had not heard of him since he went away; but about a fortnight or three weeks Col. Sidney said he had heard of him, that he was at Newcastle and staid there; but he wondered he could hear no more of him. I then went into Essex, and when I came back from thence, he told me, he was come, but I had never seen him, not to this day, indeed I had once appointed a meeting with him at Mr. Welt's chamber; but something or other happened, we did not meet.

Att. Gen. We

Att. Gen. We have done with my Lord Howard; if they will ask him any questions they may.

L. C. J. They know their time, when the King's Attorney has done with any witnesses, then they may examine him if they please. If they will not, call your other witnesses.

Att. Gen. Will you ask him any questions?

Jones. No, no, by advice they are to ask him nothing.

Att. Gen. We shall give your Lordship and the jury an account in the next place, that we have traced Aaron Smith into Scotland. And for that we shall call some witnesses which indeed we did not produce before at any trial, because we had not then discovered so much. We shall bring you the person at whose house he lay at Newcastle, and the very messenger that was sent with him to conduct him a by-way into Scotland. Call Sheriffe and Bell.

L. C. J. Look ye, gentlemen, you that are at the bar there, you must let the jury stand by themselves. I see there are a great many others intermingled with them, and you, Gentlemen of the Jury, if any whisperer talk to you, we expect that you should tell us who they are; for we will suffer no remarks to be made but what are openly made to the court, and the jury, by the counsel of both sides.

Att. Gen. Swear Sheriffe and Bell.

[Which was done.

Williams. What is this man's name, Mr. Attorney? Friend, what is your name?

Witness. My name is Sheriffe.

Att. Gen. Pray give my Lord and the jury an account what you know of any person that lay at your house some time since, and whether you have seen him since? My Lord, this gentleman did not know Aaron Smith before, and therefore I desire Mr. Atterbury may be called and

examined again. Mr. Atterbury, do you know Aaron Smith?

Atterbury. Yes, I know him very well.

Att. Gen. Had this gentleman a view of Aaron Smith?

Atterbury. Yes he had. He was brought where Aaron Smith was, and this other person was by before him too, and I was by when they had a view of him.

Att. Gen. Now pray give an account what you know of the man you saw?

Sol. Gen. Where is Aaron Smith?

Atterbury. He is in the King's Bench prison, and he was brought by *Habeas Corpus* to Whitehall before the King, where these two persons were brought likewise, and there this man Sheriffe did own that Aaron Smith was the man that was at his house; and the other Bell owned that he travelled towards Scotland with him, and that he was hired to shew him the way into Scotland.

Att. Gen. Did Aaron Smith say any thing?

Atterbury. He would not answer any thing at all, nor say a word.

Att. Gen. Pray give an account, Mr. Sheriffe, who it was that lay at your house, and when it was, and what he said was his business, and by what name he went?

Sheriffe. Indeed his business I did not know; but he was at our house about the middle of February, it was thereabouts.

L. C. J. When was it? What February?

Sheriffe. The last February.

Att. Gen. You say he was at your house last February, pray tell the court where that is?

Sheriffe. At Newcastle.

Att. Gen. Do you keep any inn there?

Sheriffe. Yes.

Att. Gen. What sign?

Sheriffe. The sign of the Black-spread Eagle.

Att. Gen. And

Att. Gen. And what did he do there?

Sheriffe. He staid there one night, and went away, and returned again in twelve days or thereabouts, and came to my house again.

Att. Gen. Whither did he go from you?

Sheriffe. He went southward as I suppose, I know no further.

Att. Gen. But when he first came to your house, which way went he?

Sheriffe. He went northward towards Scotland, as he himself said, and desired to have one to shew him the way: And I sent for this man, and when he came to him he hired him to go with him, and I was by.

L. C. J. When he first came to your house about the middle of February was twelvemonth, whither was he bound then, northward or southward?

Sheriffe. He was going to Scotland, that is northward.

L. C. J. And you say, after he came back again, and lay another night at your house.

Sheriffe. Yes, ten or twelve days after he did.

L. C. J. And which way went he then?

Sheriffe. Then he came southwards towards London.

L. C. J. Did you take exact notice of the man?

Sheriffe. Yes, I saw him before his Majesty and the council.

L. C. J. And upon your oath that same man you saw there was the same man that lodged at your house in February was twelvemonth?

Sheriffe. Yes it is.

Att. Gen. What name did he go by at your house?

Sheriffe. He went under the name of Mr. Clerke, but what his surname was I can't tell.

L. C. J. Had he a servant with him?

Sheriffe. He had a man with him that staid at our house during the time of his going northward?

Att. Gen. What did he call his name?

Sheriffe. William Langston.

Att. Gen. Did he desire you to furnish him with a guide?

Sheriffe. He told me his servant did not know the way, and his horse was a little lamish, and desired me to get a guide for him. For after he had dined at our house it happened to be a rainy day, and he could not go further that night, and therefore desired me to get him a man that knew that country, and I sent for this same man, and he hired him, and he went along with him next morning, my Lord.

Att. Gen. Whither was he to go?

Sheriffe. Truly I did not know; but he told me he did not know the way into Scotland, and I directed him to a gentleman's house at Jadbrough in the way.

L. C. J. Is that the road to Scotland?

Sheriffe. Yes the high road to one part of Scotland.

L. C. J. Did he tell you to what part or place of Scotland he was to go?

Sheriffe. He named the west of Scotland, I think he named Douglas, but I do not know what place certainly he designed for.

Att. Gen. Then where is Bell?

Bell. Here.

Att. Gen. Had you a view of this man they call Aaron Smith?

Bell. Yes I had.

Att. Gen. Give an account whether you saw him in the north, and when and where.

Bell. This man, Mr. Sheriffe, sent for me. I live at Newcastle, and there I keep hackney horses to serve any gentleman, or be a guide to them as there is occasion, and Mr. Sheriffe sent for me, and when I came, he told me the gentleman wanted a guide into Scotland. We immediately agreed,

agreed, it was upon Thursday night before that we call Easter-Eve.

L. C. J. When was it, say you?

Bell. It was the Thursday before Easter-Even, so they call it with us, that is, Shrove Tuesday.

L. C. J. Ay, they call it so in those places, because 'tis the Even of the Fast of Ash-Wednesday, the beginning of Lent—Well, go on.

Bell. We went away on Friday the next morning on our journey towards Jadbrough, and the second day, which was Saturday in the afternoon, my horse tired, whereupon he left me with my horse, and took the man's man of the house where he left me, to guide him, for my horse would not ride up with him being tired, and he resolving to go on, and he bid me follow him on the Sunday morning to Jadbrough town, which I did, and we staid there all Sunday. And on Monday morning I saw him take horse and another man that was his guide, and away they went, as I think, he said towards Douglas he was going. And he paid me, and I returned again from him to Newcastle and left him.

L. C. J. Pray how far was this, you say you went with him to Jadbrough, how far distant is that from Newcastle?

Bell. To Jadbrough, my Lord?

L. C. J. Yes.

Bell. 'Tis forty miles, my Lord.

L. C. J. How near Scotland is it?

Bell. 'Tis within some six miles of the English border.

L. C. J. Did you see him at any time after that?

Bell. I saw him at his coming back again; being at Sheriffe's house, his wife asked me, if I would go up and see the gentleman that I went with towards Scotland: So I went up, and he made me eat and drink at the table with him.

Att. Gen. What name did he go by?

Bell. He went by the name of Clerke.

Att. Gen. Was there any servant with him?

Bell. There was a man that came with him as a servant there, and was all the time at Newcastle, that he was gone towards Scotland, till he came back again.

L. C. J. Mr. Attorney, did this man see Smith at the time the other saw him?

Bell. Yes, I did.

L. C. J. And is that the man that went by the name of Clerke at Newcastle, and that you went with towards Scotland?

Bell. Yes, it is.

Atterbury. And when they charged him with it, Aaron Smith did not deny it.

Att. Gen. Did you go any by-road to get into Scotland?

Bell. No, 'tis the road gentlemen usually go to Jadbrough, and so on; because 'tis something the nearer way to that part of Scotland, as we judge it to be, therefore gentlemen use it.

Att. Gen. Is it an high open-road?

Bell. Yes, 'tis the high open way to that part of the country.

Att. Gen. My Lord Howard, pray were the names of any of the Scotchmen mentioned at your meeting that were to be sent for?

L. Howard. Yes; there was my Lord Melvin, Sir John Cockram, and one Campbel.

Att. Gen. Now, my Lord, we will give you an account, that as Smith went into Scotland, so these persons soon after came into England.

Juryman. My Lord, we desire that my Lord Howard would name those Scotchmen that were to come.

L. Howard. There was my Lord Melvin, Sir John Cockram, and one Campbel, one that was of my Lord Argyle's name and family; and there was another name, but I can't remember what that name was.

Att. Gen. We

Att. Gen. We shall give you an account, my Lord, that they came immediately after this to town; and at the breaking out the plot they absconded.

L. C. J. Mr. Attorney, has my Lord Howard his pardon?

Att. Gen. Yes, my Lord, he has.

L. C. J. Then your Lordship may be covered.

L. Howard. I can't tell but they may ask me some questions.

Att. Gen. Then you may be uncovered when they ask them, in the mean time your Lordship may be covered. Swear Sir Andrew Foster. (Which was done.) Pray, Sir, will you tell my Lord and the Jury what you know about the Campbels, and Sir John Cockram's being in town? or any other Scotchmen that you know of?

Sir Andrew Foster. My Lord, I did see those gentlemen in the beginning of last summer. Sir John Cockram, and Mr. Monroe, and Campbel the son, I did see; but the father I did not, but I do know he was in town, though I saw him not.

Att. Gen. How do you know it?

Sir Andrew Foster. I had messages from them.

L. C. J. Sir Andrew, you say, you saw Sir John Cockram, and Monroe.

Sir Andrew Foster. Yes.

L. C. J. Did you see any body else?

Sir Andrew Foster. I saw Sir George Campbel the son.

Att. Gen. What became of them upon the discovery of the plot?

Sir Andrew Foster. Sir John Cockram did abscond, and Mr. Montoe was taken into custody.

Att. Gen. What became of the others?

Sir Andrew Foster. The Campbels were both in custody?

Att. Gen. Did you see any commission they had?

Sir Andrew Foster. I did see a commission that Sir John Cockram had.

Att. Gen. What was it for?

Sir Andrew Foster. To make a purchase of some plantations beyond sea, I think it was Carolina.

L. C. J. Ay, where my Lord Shaftsbury had an interest.

Sir Andrew Foster. It was some of the West-Indies.

L. Howard. I did omit that passage, my Lord—

Att. Gen. Pray, was it discoursed then, what should be the blind for these gentlemen that were notorious dissenters, that they should come to town from Scotland about?

L. Howard. It was to carry on a plantation in Carolina. The Scotch gentlemen were personally known to my Lord Russell only; and my Lord Russell was to write the letter to them, and, I suppose, did.

Att. Gen. Mr. Atterbury, what do you know of these Scotchmen coming to town, and what became of them afterwards?

Atterbury. My Lord, about the beginning of July, 4th, 5th, or 6th, or thereabouts, I had some information, that there were some Scotch gentlemen that had been shifting up and down, and at that time were about Black-Friars, lodged there secretly. I immediately went with the King's proclamation, and some warrants that I had to apprehend some traitors that were fled: And when I came, I found that Mr. Common Serjeant having notice of them, had beat up their quarters, and they were endeavouring to escape by water; but they were caught. There was Sir Hugh Campbel, and Bayley, and Sir George Campbel, and some others, I know not the names of them all; truly I can't tell whether Monroe was not another, but Sir Hugh Campbel I had in my custody, and Bayley was immediately committed to the Gate-house; and the rest of the gentlemen

I afterwards took in a cunning hole by Moor-fields, in a back house. And when I came there, I found them lying on the bed in the middle of the day; and had them prisoners in my custody two or three months; and then they were all sent out of my hands into Scotland prisoners. Six of them there were, my Lord, that I saw.

Att. Gen. We have done, my Lord, only we desire that a word of a record may be read.

Williams. What record is it Sir?

Att. Gen. Of Colonel Sidney's attainder.

Williams. My Lord, we shall desire your judgment, whether that record ought to be read against Mr. Hambden; I perceive by Mr. Attorney, that it is a record of the conviction of Mr. Sidney, which ought not to be given in evidence against Mr. Hambden upon this indictment.

Att. Gen. We make use of it, to shew how upon former trials, upon this evidence, verdicts have gone.

Williams. We are in your judgment, my Lord, if by law it may be given in evidence against Mr. Hambden, who is neither party nor privy to it, nor indicted for the same offence.

Att. Gen. Let it alone then.

L. C. J. Well, Mr. Attorney does not press it. What say you to it, gentlemen, for the defendant?

Williams. May it please your Lordship, and you gentlemen of the jury, I am of counsel for Mr. Hambden the defendant upon this indictment here before you. This indictment is a severe indictment: It is a very high crime of which my client is accused. How far the evidence tends to reach it, you have heard; and I shall, with the patience of the court, particularly observe it to you. But I shall first speak to the indictment itself: It says, that Mr. Hambden being a person of a turbulent disposition, and seditiously intending to dis-

turb and disquiet the King's peace, and to stir sedition, and to bring the government into danger, did conspire, &c. As to this matter, gentlemen, there is no manner of proof of what the indictment charges, as to the disposition of the person accused; nor that he had any other design, than what my Lord Howard hath now sworn. Then it says further, that Mr. Hambden did consult and conspire with divers persons to execute these purposes; and particularly for the making and raising of an insurrection in the kingdom. This is laid as the particular fact: And for this purpose he did further conspire with several persons, to provide arms and armed men: And for their fulfilling of this, he did further consult with several persons, that some persons should be sent into Scotland, to stir up the King's subjects in Scotland to a concurrence and conjunction with some people in England, about this his evil design. How far this indictment is proved upon the defendant, gentlemen, is the question before you. He has pleaded not guilty, and hopes to satisfy you he is not. Gentlemen, as to what evidence has been given you so far as it is positive and affirmative, I mean the testimony of my Lord Howard, in that part, it is impossible for us that are of counsel for the defendant directly to contradict him with proof, or to give a direct positive proof in answer to it: I say, it is impossible for us to contradict him, who gives such a positive evidence of fact. By the evidence of my Lord Howard he tells us there were six persons in this council, as he pleased to call them: By his evidence, three of the six are dead, my Lord Russel, Colonel Sidney, and the Earl of Essex; he himself is the fourth, the defendant is the fifth, who cannot give evidence for himself; and the Duke of Monmouth who is the sixth, being away, there is not any person in being, that should contradict my Lord Howard's affirmative in this part of his evidence but the Duke of Monmouth: Whom we cannot have here,

since

since it appears by the evidence, Mr. Attorney General could not prevail to have him at this trial; therefore proof of that nature cannot be reasonably expected from my client to acquit himself by a positive contradiction of what my Lord Howard has sworn. Then in this case we must, as in all cases where a person does swear directly against a defendant, endeavour to satisfy and persuade your Lordship and the jury, upon circumstances arising out of this fact, and further circumstances attending the fact, and by probable arguments and reasonable inductions out of the evidence, that this gentleman, the defendant, is not guilty of what he is charged with.

In the first place, we shall observe upon the testimony of my Lord Howard, that as to some things he is very positive and particular: He has an incomparable memory, and speaks particularly to persons, particularly to places, particularly to times. But, gentlemen, as to that which is the principal part of his evidence, and which most affects the defendant, and wherein it concerns us to contradict or disprove him, he is wanting as to that circumstance of time. He that is so exact in his memory as to other circumstances, is not positive, nor any thing like positive, as to the times of the meeting. For they would imagine, that the first meeting the defendant was concerned in, was at his own house. He describes the house and the place very exactly, but as for the time, he only says it was about the middle of January: He carries other things in his memory positively, and whether it might not be expected in a case so remarkable as this, and which so nearly and highly concerned himself, that he should be as particular in the time, as he is in other things, you may rationally judge. His Lordship sometimes is very particular as to time: He tells you in his relation about my Lord Shaftsbury, that his going to him was on the Saturday after Michaelmas-day, and then he pursues it to the second and

third of October. He is positive so many several days; upon which I would observe, that he being particular to a day, as to other things, may well be expected to be ready (if it be true) to be as particular as to the time of this meeting; but therein he is to seek; he is doubtful as to that. And you must give us leave, gentlemen, to make this observation, that since he will not be particular to that time, we do apprehend that he gives himself a little loose, that we may not meet with him to contradict him in that circumstance: For if he should be positive therein, as he is in the other matters that concern not the defendant, we might perhaps by clear pregnant circumstances contradict, if not disprove his Lordship, that it is not probable (if possible) it should be true what he affirms. But, gentlemen, we must answer it as well as we can; and since he is so cautious, we must meet him by arguments in another way. Another thing we should observe upon my Lord's evidence, is this; that my Lord, though he be particular as to many facts and things relating to my Lord Shaftsbury, where he names other particular persons, I think Colonel Rumley and Walcot, and names the particular discourses, particularly instancing in them, between him and my Lord of Shaftsbury, between him and Walcot, and between him and other persons; yet he has not made use of any one circumstance of fact in this case of the defendant's now before you, that does justify what he has said, save only that of Aaron Smith; not any one circumstance of fact. So that there is no more than the bare saying of what my Lord Howard is pleased to deliver no more than his oath, nay, no more than his observation, and inference of much of what passed in the company of several persons, without any concurring circumstances in fact to justify or confirm his testimony. It might have been an easy matter, if all that my Lord Howard says was true, that there was such a meeting at Mr. Hamb-

Hambden's house by such and such persons, to prove that such persons, or some of them met there. But that there should be no person to prove, that these gentlemen, or any of them, were there; nor any other fact or circumstance in the world, to go along with my Lord Howard to justify his asseveration, is very wonderful, and may well make it doubtful that it should not be true: And the rather, gentlemen, (if it be true, as my Lord Howard would have it) because there was a second meeting of all these persons at my Lord Russel's, which was so public and open a place, and yet no man to concur or go along with my Lord Howard in any one thing; no particular fact assigned to justify his testimony as to this meeting, is strange, if it be true.

So then, gentlemen, there is no more than what my Lord Howard has sworn, without any one circumstance to back it, to prove the defendant guilty. My Lord, taking this upon the main of my Lord Howard's evidence, it will be pretty hard too upon the nature of the fact, that he is pleased to prove against this gentleman, to make an answer to it; and truly, I think as hard for you to believe it. Gentlemen, he would imagine, that there should be men raised, men armed, a discourse of money, and this done, as he would have it, about the middle of January, and yet nothing at all done, though there appears no manner of discovery of this very evil contrivance, till about July. Neither is there any thing done in order to the raising of men, the arming of men, or the levying of money all this while. So that there is no one fact of any kind whatsoever, that goes along with what my Lord Howard has said.

My Lord, and gentlemen, another thing we would desire to observe, is this, and here we shall begin with what we have to say, as to our own arguments and circumstances, that we have to take off from the testimony of my Lord Howard in this case: In the first place, it appears by the evidence of my

Lord Howard, that he was very deep in a conspiracy against the government, and to make a disturbance in the kingdom long before this, that he now speaks of against the defendant, that is plain enough; for he tells you, that my Lord Shaftsbury and he at Michaelmas, were contriving of projects to overturn the government, and raise a rebellion. It appears plainly by his evidence, that my Lord Shaftsbury, when he left his house, was resolved upon it, and my Lord Howard was very solicitous to carry on the same design; nay, he was so active in it, that he tells you, that he did create messages between my Lord of Shaftsbury, and the Duke of Monmouth, and would needs go by a false insinuation of his own, to draw in the Duke of Monmouth, by telling his Grace, his information he had from Walcot, and not saying he came from my Lord Shaftsbury, with whom he says he had been discoursing; but he would put it under some sort of disguise, the better to prevail. So that it appears my Lord was very criminal and guilty in this case. Why then, gentlemen, my Lord being so highly criminal, and there being a discovery of this conspiracy by Keeling, and Rumsey, and West, having made a more manifest discovery, and this happening in July, then it was high time my Lord Howard might conceive for him to secure himself, and save one, he being thus guilty, as he declares; it is but reasonable to conjecture, he then began to place his security in a pardon; and that there were no other means to save his life, and that the way to it, must be by some further discovery of a conspiracy against his Majesty and the government; and having since obtained a pardon, it is agreeable, that whatsoever my Lord Howard has done in this case, he has done for his own sake, to purchase his own pardon for a treason he was so deep in, and to out-do all the witnesses that went before him, by fresh testimony against the defendant and others; this might incline him to

to go an inch or two, or more, beyond the discovery of Keeling, West, and Rumsey ; to have but said the same thing that was proved by three or four witnesses before him, might not perhaps have availed him ; may not the indifferent believe it in this case, to be the interest and security of my Lord Howard, by these means to merit his pardon ? May it not be believable, that what he hath said, he hath said only for his own sake, and that he has, by exposing this gentleman, and the blood of others, procured himself a pardon ?

L. C. J. What do you mean by that, Mr. Williams ?

Williams. By being a witness against the defendant and others, he has procured his own pardon.

L. C. J. That is a little harsh expression—

Williams. My Lord, I explain myself thus—

L. C. J. It is an harsh word, and too roundly expressed ; you had need to explain yourself ; it is a little too rank, as though the King's pardon were to be procured by blood.

Williams. My Lord, I intend nothing of hardship, or amiss, but to speak according to my instructions, and to make the best observations I can, out of the evidence for my client ; I will express myself as well as I can, that my Lord Howard being a witness against men in a case of this high nature ; and there being other witnesses before, and besides himself, to the discovery of the late conspiracy against the government, it concerned him to give an honest evidence in the case, or else he could not have any expectation of his pardon ; for if he had done no more than what others had done before him, when there were three witnesses besides, and they had got the start in the discovery, his discovery had been made in vain ; and therefore he was concerned perhaps to strain that he might make such a discovery as

might answer his end ; and this will arise naturally, I suppose, out of what has happened in this case : For it seems, though it was something long before he got his pardon, now he has it. My Lord, another thing is this, how far my Lord Howard will be credited in this matter, we shall leave his credit to you, gentlemen, upon what we shall prove. For we shall make it out by persons of great honour, and persons of great integrity, that upon discourse concerning this conspiracy, my Lord Howard did declare, that he knew of no persons that were guilty of having any hand in it ; he declared it upon his honour, he declared it upon his religion, and he used all the asseverations that were possible for a man to offer, to make himself believed.

My Lord, it may be objected, as it has been sometimes, that that was to out-face the conspiracy, and so stop the prosecution of that he knew himself to be so guilty of : But however, thus far we may make use of it for the defendant, that if my Lord Howard, would in the face of heaven, pawn his honour, his trust, his conscience, and his religion, to assert that which was not true, and under all those vows and engagements affirm an untruth ; a man that would deal so, and speak an untruth with that solemnity, I think is not a person of the same credit, as a person of certain known truth and veracity. For if a man will say one thing one time, and that with solemn vows and asseverations, and swear another thing the quite contrary another time, he does not stand so fair for credit, I think, as he that always maintains and avows the truth. So far we may make use of it very safely, I think, as to my Lord's credit.

My Lord, another matter that we have to urge, is, That since the trial of my Lord Russel, and since the trial of Colonel Sidney, my Lord Howard has in discourse owned, that my Lord Russel died innocent. If that be true, it will have a great

weight sure with you, gentlemen, to discredit my Lord's testimony : For then he hath contradicted what he hath sworn. For if my Lord swore, that my Lord Ruffel was guilty, as all the world knows he did ; and afterwards soberly, and publicly, shall have said he died innocent, he has contradicted his own evidence, and his own oath ; and sure is not to be believed as to what he swears now against the defendant. My Lord, it did not rest there ; but since the trial of Colonel Sidney, it will be proved by witnesses, that my Lord Howard did declare, that Colonel Sidney had hard measure. This will be proved by witnesses ; and it is rather to be presumed, he meant hard measure as to his own testimony, which he was best knowing of, than of any thing else as to his trial. Now, how this person of great honour can solve this, and how it can stand with his oath, and his honour ; I will leave it to you, gentlemen, to judge of it. My Lord, I have another matter to say, that with me seems to have very great weight : My Lord Howard upon some occasions has said, being in discourse with a very great intimate of his, and the man being speaking of the world to come, speaking of eternity, speaking of the immortality of the soul, speaking of the rewards and punishments of another life ; my Lord Howard should say to him, " How long wilt thou persist in this folly ? How long wilt thou be so foolishly prevailed upon, as to believe the world was ever made, or will ever have an end ? " My Lord, if a person be of that opinion, and a man's judgment in such things will discover itself in his words ; how far the testimony of a man of that persuasion shall influence a jury when he stands single, when there is no fact to justify him, in point of probable circumstance, will be easily observable, and I must leave it to the gentlemen of the jury to consider.

My Lord, we have another saying of my Lord Howard's, which we shall give you an account of in the proofs, and that was in relation to his pardon. Being free in discourse, as my Lord is a may very liberal that way ; and his friend enquiring whether he had his pardon : " No, says he ; nor I cannot have it till the drudgery of swearing be over. " Truly, it is a very odd thing, that a man should call that drudgery, that is his duty. To testify the truth is as much the duty of every honest man, as any thing else. Men have died for the truth, and we look upon those as martyrs, and the best of martyrs that die for the truth. Now, that this noble Lord, or that any man should call this a drudgery, which is so manifest a duty, by giving a true testimony to preserve the King's life, and support the government against the contrivance, and conspiracies of evil men, is but an odd insinuation ; and truly I think is rather to be taken in this sense, as to my Lord, that he did strain a little to make his discovery the more profitable to him ; and so did say more (so far I may safely go) than any one else did say. And, my Lord, this is that that I would observe upon the first part of the evidence.

As for that part that concerns Aaron Smith, the evidence given by Sheriffe and Bell, I submit that to your Lordship, how far that can any way affect Mr. Hambden the defendant. It is introduced to fortify the testimony of my Lord Howard, and it is introduced by himself thus : That at their meeting at Mr. Hambden's house, there was a discourse of some assistance to be had from Scotland ; but, says he, at the second meeting at my Lord Ruffel's, then it came to a further discourse, and Colonel Sidney did undertake to name a person to send thither ; and a person was named ; he does not say Mr. Hambden was concerned in-it, or that Mr. Hambden

den named the man, or any thing particular as to Mr. Hambden, more than that he was in the company: Mr. Hambden had no hand in the undertaking, or sending him into Scotland; that was altogether the part of Mr. Sidney; save this, that he says my Lord Ruffel writ the letter that was to go by him. It does not appear Mr. Hambden was at all concerned in it, but only was there.

L. C. J. And consented to it.

Mr. Williams. I would not strain any thing, my Lord, further than the evidence is.

L. C. J. Nor do not misrepeat it neither.

Williams. I design not any such thing, my Lord.

L. C. J. But you do, though; for he swears it, every one of them consented.

Williams. By silence, it must be then. For he does not say, that he said any thing. He swears only, Colonel Sidney undertook to manage it, to send a person; and my Lord Ruffel to write the letter.

L. C. J. And all the rest consented to it.

Williams. What is meant by consent, when nothing was said, I must leave to the Jury. I must agree, the Lord Howard did swear, that my client was in their company, but how far he did, or did not consent, does not at all appear; and how far this will charge my client, I must leave to you, gentlemen. But the proof as to this matter stands thus; that Aaron Smith was at Newcastle in February last, that he went publicly. Now, my Lord Howard says, that he went to agitate a confederacy between the malecontents of Scotland, and those in England. Now it is strange, that a man that was to agitate such a concern, should go publicly with a servant to Newcastle; so publicly as to be known again; and of his own accord tell them he was going to such a

place in Scotland. And be it so in fact, will any man apply this to any thing that was done before (as my Lord Howard says, about a consultation to join in rebellion?) Will any man think that he should talk at that kind of rate, if that were his employment, and tell whither he was going? But I rely upon this in point of evidence. It is not proved yet, that Aaron Smith was in Scotland. That he came within six miles of the borders of Scotland, is proved; but it is not proved he was in Scotland, or did agitate any conspiracy there; or did any thing more than go within six miles of the borders of Scotland. But then they would press it further, and they say, that there were some Scotch gentlemen, that in the summer came here into England, and that they hid themselves, when the plot was discovered. It does not appear that my client had any conversation with these Scotch gentlemen, or any of them, or was ever in their company. It is a very remote inference to bring any thing of this to affect my client in this high charge.

My Lord, we shall add one thing more to disprove that part of the indictment, that lays the imputation of turbulency and sedition to the charge of Mr. Hambden; and which also will shew the improbability of his being concerned in any thing of this nature. We shall prove him to be a person of a sober conversation; of a retired life and studious disposition; and as an evidence for the defendant, we shall prove that he, in October 1680, left England for his health-sake, and went into France for the recovery of his health. He continued there till about Michaelmas was twelve month, then he returned. It is true he continued in England from Michaelmas to the time they speak of; but we shall make it plain, that in February, my client, and my Lord Montague had adjusted

adjusted matters between themselves, to go the beginning of summer again into France, there to continue and abide some time for their healths. Here is a strange kind of imagination, that this contrivance between my Lord Howard and my Lord Shaftsbury, that was going on before this time, and that was disappointed, and my Lord Shaftsbury went away, and afterwards died in Holland, was taken up by my client, and those other persons when my client, as we shall prove, never intended to stay in England. My Lord, he was a parliament-man in both the last parliaments, but appeared in neither of them, being all the while in France for the recovery of his health. We shall prove him to be one studiously inclined, that he lived a retired life, and kept very little or no company; and you will hear from persons of very great honour and quality, what he is, as to his person, and as to his opinion; and then we shall submit it to you gentlemen of the jury, whether you can believe him guilty of this he is charged with, which is your issue. You are to try, whether he be guilty, or not guilty of the crime charged in the indictment.

Wallop. My Lord, and Gentlemen of the Jury, I desire to make one observation, before we call our witnesses.

L. C. J. Pray do not take up our time altogether in speeches, but go on to your evidence.

Wallop. I desire to observe but one thing, my Lord.

L. C. J. Make your observations at last, but spend not our time in speeches. I know you will expect to be heard at last, and so you shall whatever you will say.

Williams. Call the Earl of Anglesey, the Lord of Clare, and Lord Paget. Mr. Ducas (who appearing was sworn.) Now we have him here we must begin with him, my Lord. Mr. Ducas, pray what did you hear my Lord Howard say at any

time concerning this conspiracy, and who were concerned in it, and who were not?

Mr. Ducas. My Lord Howard came once to the house of Colonel Sidney, I believe it was about eight days after the imprisonment of Colonel Sidney, and when he was in the house, I asked him what is the matter, my Lord? He did answer me, he was told there was a plot against the King and the Duke, and one general insurrection to be made, and that Colonel Sidney sent a man into Scotland, to which thing my Lord Howard swore, laying his hand on his breast, saying, "God knows all things, and God knows I know nothing of that; and I am sure if Colonel Sidney had known any thing, he would tell me;" and I said, "What is the matter, my Lord? Are you afraid?" And he made answer to me, "No honest man is safe in his own house, I pray you lend me a bed to lie in." And he asked me about the goods of Colonel Sidney, because of the plot and such things, and he desired to have them removed to his house; and he said, rather than go to the tower he would do any thing.

Williams. Speak again to the Jury that did not hear you, what said my Lord Howard to you?

Ducas. He said, rather than to be a prisoner again he would do any thing.

Williams. Who to be a prisoner again?

Ducas. My Lord Howard.

Att. Gen. What things were spoken of?

Ducas. He said he would do any thing.

Williams. Were you speaking of the conspiracy? Of the plot?

Ducas. He spoke of the plot, and said he knew nothing of it.

Williams. What did he say, Sir?

Ducas. He said to me, and swore, he knew nothing of it, and called God to witness.

Williams. Pray did he then say he would do any thing rather than go to the Tower, when

when you were talking of the plot and conspiracy?

Ducas. Yes, he would do any thing rather than be a prisoner again.

Att. Gen. Pray what did he say?

Ducas. He raised up his hands on high, and said, he knew nothing of the plot, or of the insurrection, or that Colonel Sidney had sent any man into Scotland.

Williams. When was this?

Ducas. I believe it was eight or nine days after the imprisonment of Colonel Sidney.

Att. Gen. What day of the month, and what month was it?

Ducas. He was imprisoned about the end of June.

L. Howard. My Lord, it would be necessary that I should make an answer to this, and I know not whether I should make a particular answer to every one; for here is a whole set of witnesses, I see.

L. C. J. No, let them alone. You must not interrupt them, they must go on with their evidence; and when 'tis a fit time for you to answer them, the counsel for the King will call you.

Williams. Pray swear Mr. Howard (which was done.) Pray, Sir, will you please to acquaint my Lord and the jury what you know; of what my Lord Howard has said of the plot, and who were concerned in it?

Mr. Howard. My Lord, what I have said is in the paper of Mr. Sidney's trial, and truly I can say no more than what I said there.

Williams. Pray speak out, Sir, and tell it again to this jury.

Howard. I was told I spake it very loud then.

L. C. J. Pray, Sir, speak as you please, we don't direct you in what key you shall speak. Speak in what key you will.

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Howard. Then if you will have me speak it, I will speak it as loud again. My Lord, is Mr. Hambden here?

L. C. J. Yes, there he is.

Howard. In the first place I do not know Mr. Hambden, my Lord, I cannot promise to speak the very words that I spake the last time, I cannot make them so fit as one tally fits another.

Att. Gen. Consider, Sir, you were not sworn then, you are sworn now, that is the difference, and therefore pray consider of it.

Howard. My Lord, as near as I can, I will repeat the same words again, I had little acquaintance with my Lord Howard; but meeting him often at my brother's house (and being he was extraordinary pleasant company, I must needs say that he was so, and a man of great wit) and I coming from Whitehall, he asked me what news of the plot? I told him there were some people that were in the proclamation, or would be, and I named their names. Says he, I know none of them except Rumbald, I think; and by chance I met him passing through the Old-Exchange, and he saluted me very kindly. After this my Lord Russel was taken, and when my Lord Howard heard that, says he, then we are all undone. And I very much fear it is a sham plot, since they have seized upon my Lord, and I doubt he is a lost man. After that, I think, as near as I can remember—The next thing was this—If you look upon the book, you will see what I said there.

L. C. J. We are not to look upon the book, man. You must give your evidence yourself. Mr. Howard, I hope you do not swear by book? Let the truth come out in God's name, whatever it be.

Williams. Ay, my Lord, we desire to have truth come out.

I. C. J. Ay, whether it be of one side or the other, God forbid but truth should be spoken. Mr. Howard, go on.

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Howard. Then,

Howard. Then, my Lord, Colonel Sidney was taken, and says my Lord, I am extremely troubled for Colonel Sidney, for he is my very good friend; said I, Why are not you concerned for my Lord Russell? He is of your blood, says he, he is a man without exceptions. There is no man of such honour as he, but I am concerned for Colonel Sidney, as that particular man that has obliged me above all the world, but I never heard my Lord Howard name Mr. Hambden in all my life.

L. Howard. I'll give you a reason for it, my Lord, if you please, why I said so.

L. C. J. My Lord, this is evidence for the defendant. If the King's counsel will call you afterwards to make answer to any of these things, then is your time to speak. We will not let them interrupt you when you come to speak, nor must you interrupt them now. We are bound to hear both sides, and so by the grace of God we will do.

L. Howard. My Lord, I desire both he and his brother may stay in court, for I have something to say to them.

Williams. Pray what did you hear my Lord Howard say concerning the plot?

Mr. Howard. He did deny it positively, and said, they acted nothing but what was legal, and he said it five hundred times over.

Williams. Did he deny it?

Howard. Yes, he did.

L. C. J. But when he said they acted nothing but legally, what did he mean? Was this plot legal?

Howard. I had former discourses with my Lord Howard at other times, and I asked him; my Lord, what tends all this to? Your going up into the city, and making these meetings? Says he, we intend nothing but what is legal. There is not one man in the company that I know of, intends any thing else.

Williams. What was my Lord's opinion of the plot in June or July, or August?

Howard. He said he knew nothing of it, nor could he believe there was any such thing. When those persons were named that were to kill the King, "Lord bless me (said he), can there be such a thing in nature, that any men should be so wicked, but that there is one man of honour or estate, or conscience, that ever had any such thought, it can never into my head, I can never believe it."

Williams. When was this?

Howard. When Rumbald and those other people were put into the proclamation.

Att. Gen. Mr. Howard, then I will ask you your opinion, whether, in your judgment, every man that was in the plot could not have said so much?

Howard. I suppose every man in the plot would have defended himself as well as he could, but I cannot tell what way.

Mr. Thompson. Sir, did he barely affirm it, or with asseverations and imprecations?

Howard. My Lord was not put upon his oath before me.

Att. Gen. Mr. Howard, don't you believe a great many that were concerned in this plot would deny it?

Howard. I am to give my opinion only for myself, not for other people.

L. C. J. Have you done with him?

Williams. Yes, my Lord.

L. C. J. Then go over, Sir.

Howard. My Lord, I am troubled with fumes, and cannot well endure a crowd, therefore I desire I may have leave to be gone.

L. C. J. You may go, if you please.

Williams. Call Mr. Edward Howard. (But he did not appear.) Then swear my Lord of Clare and my Lord Paget. [Which was done.]

L. C. J. Well, what do you ask my Lord of Clare?

Williams. My

Williams. My Lord of Clare, will your Lordship please to acquaint the court and the jury, what you heard my Lord Howard say concerning the late conspiracy?

E. of Clare. My Lord, some indisposition I have had of late, together with the great rigour of the season, has confined me to my house these six weeks, so that I should not come here but upon this summons of a subpoena, which I thought I ought not to refuse. I suppose I need not repeat much of what was said at Col. Sidney's trial.

L. C. J. My Lord, you must give what evidence you have to give now.

Williams. My Lord, the gentlemen of this jury have not heard it, therefore you must say it all over again to them.

E. of Clare. Some time after Mr. Sidney was taken, my Lord Howard came to see me, and complaining of the times, said, that all things were very sad and dangerous, and if ever he was questioned again, he would not plead, but desire them only to count noses, for the quickest dispatch he thought was best: I replied, sure his Lordship was in jest. He said, no, he was in earnest, for he was confident if he came to trial, they would have his life, let him appear never so innocent. I said, I hoped not so, it was only his Lordship's fear, and because of that, I thought it might be presumed he would venture much, rather than be tried. And discoursing of the late Primate of Armagh's prophecy; he said, for his part, he thought the persecution was already begun, and he did believe it would be very sharp, but withal, he hoped it would be but short; and then he began to wish himself beyond sea till the troubles were over; and in compliance with his Lordship I did wish so too. But as to Sidney, he did with great asseverations very much assert his innocence. He said, he thought he was not guilty of any of the things said to his charge, and spoke with large encomiums in his praise, as he had

obligation to do, and seemed to bemoan his misfortunes; which I said I had then reason to believe he was real in, for I believe never any man was more engaged to another than he to Colonel Sidney. I told him there was a discourse of some writings of Mr. Sidney's that were taken; he said he was confident they could make nothing of any writing of his; I told him, I supposed he meant, legally they could not do it. This was the most he said; as to Mr. Hambden, he mentioned nothing that I knew of.

Williams. Did he seem to declare any opinion about the plot or conspiracy in general, that there was any such thing or not?

E. of Clare. I do not remember it.

Att. Gen. My Lord of Clare, did you never hear my Lord Howard before this complain of the government that it was amiss, and was to be rectified?

E. of Clare. Yes, he often did complain. Every body knows my Lord's way of discourse.

L. Howard. Pray will you ask him, if my Lord of Clare used to fall out with me upon those discourses.

E. of Clare. My Lord was always good company.

Att. Gen. You mean *a-propos*, my Lord.

E. of Clare. I understand what you mean by *a-propos*, you are a learned man, I know.

Sol. Gen. My Lord of Clare, if I apprehend your Lordship aright, my Lord Howard was discoursing of the Primate of Armagh's Prophecy, and said he thought the persecution was already begun, and would be sharp, though he hoped it would be short, and he wished himself beyond sea till the troubles were over, and your Lordship wished yourself so too?

E. of Clare. No, I said in compliance with his Lordship, since he wished himself beyond

beyond sea till the troubles were over, I wished he were there too.

L. C. J. But I perceive all these discourses concerning the government are reckoned but jests and matter of laughter, but 'tis a very rank way of jesting. I assure you.

Williams. My Lord, we call our witnesses seriously; they are the King's counsel that jest.

Att. Gen. Was this before my Lord Howard was taken?

E. of Clare. Yes, but after Mr. Sidney was taken.

L. C. J. Well, who do you call next?

Williams. My Lord Paget, pray what have you heard my Lord Howard say concerning the plot, and when?

L. Paget. My Lord sits there, and I believe he may remember it was about the 7th of July, the Saturday before my Lord went into the country, to the best of my memory, which was, I take it, the 9th of July. Upon Saturday the 7th at night my Lord came to see me, I told him I was glad to see him abroad, and not concerned in the disorders that were then so general; my Lord told me he had been wished joy by several, and he took it ill, because it looked as if he were guilty. 'Tis true, my Lord was a man of great fineness and readiness in discourse, and came easily into all company, my Lord said that was true, but he had so carefully behaved himself, that he was sure they could not touch him with any thing, nor did he know any thing of any body else that he could charge them withal.

Williams. When was this my Lord?

L. Paget. This was the 7th of July.

Att. Gen. Pray, good my Lord, why did you joy my Lord Howard? Had you any reason to mistrust my Lord?

L. Paget. No other reason, than because I knew he was a man of great freedom in

discourse, and might be concerned upon that account.

Att. Gen. And he would frequently discourse against the government, I suppose?

L. Paget. No, I never heard my Lord discourse against the government in my life.

Williams. Swear Dr. Burnet. (Which was done.) Pray will you, Doctor, acquaint the court, what you have heard my Lord Howard say concerning the late plot, and when?

Dr. Burnet. My Lord Howard came to see me the day after the discourse of the plot broke out, Thursday I think it was, on Wednesday it began to be talked of. The thing was little understood then, but in general a plot was discovered, and my Lord with a great many protestations, lifting up his hands and eyes to heaven, protested he knew of none, and believed there was none, and spake of the whole thing as a contrivance.

Williams. This was the day after the discovery broke out?

Dr. Burnet. Yes, the day after that I first heard of it.

Williams. Had you any other discourse with my Lord about it?

Dr. Burnet. I had not seen my Lord before of some months. And then he spake a great deal to me. He told me he had been in Essex, and after that he went to the Bath, and went so early and came away before the company came, because he would avoid all danger. And he expressed great apprehensions of fear of sham plots, and spake of false witnesses and former designs of that nature. The truth of it was, one had possessed me much with a belief of the thing, it being then but a secret, but he strove to dispossess me of that belief, and his whole discourse ran upon that for an whole hour, and expressed, as I said, great

great fear of some sham-contrivance, and spake much of false witnesses, wishing that he were beyond sea.

L. C. J. What, he spake as if there were like to be great heats and stirs, I suppose?

Dr. Burnet. No, the talk was about the discovery, which he said he believed was a contrivance.

Williams. Did my Lord Howard use to come to you sometimes?

Dr. Burnet. Yes, he used to come frequently to see me.

Att. Gen. Dr. Burnet; pray let me ask you one question, you spake of solemn declarations and protestations made by my Lord Howard, what gave the occasion to such a solemnity?

Dr. Burnet. I will tell you the occasion truly, though it was never asked me before. It was thus, I being possessed with the belief of the thing by one that assured me it was true, and would soon appear to be so, I argued upon that belief to convince my Lord Howard, that it was true, and he argued a great deal to dispossess me of that belief. And I said, if there be any such thing, I pray God forgive them that are concerned, but certainly it is one of the monstrouslest ill things that ever was done; for hereby they have done all that could be done to ruin the Protestant religion. He was smoking a pipe of tobacco, and he laid down his pipe, and lifted up his hands and eyes to heaven, and protested to me, he neither knew of any such thing, nor believed it, but it was all a contrivance.

Att. Gen. By this discourse you possibly might understand what he meant, did he mean being privy to the murder of the King, or the raising a rebellion?

Dr. Burnet. There was not a word then of the assassination, but it was all of the plot in general.

Att. Gen. Did he make no distinction?

Dr. Burnet. We talked of nothing but plot in general. For the particulars were not then known. It was only about the general notion of a plot.

Att. Gen. Pray, what was the reason you had to believe it?

Dr. Burnet. There was a gentleman from Whitehall that came to see me, and he did assure me it was true, as being one that had it from a Privy-counsellor. This was on the Wednesday, when the council sat long about it; and nothing of particulars was then let out, but only a discourse in general of such a thing, and he said it would be found to be a certain truth.

Att. Gen. But, Doctor, did not you a little wonder at the carriage of my Lord Howard? That a man that was not accused, that you heard of, should make such solemn protestations?

Dr. Burnet. My Lord, he said just in this manner as I have told you, when I said, "Pray God forgive them, if any have been concerned in such a thing," he laid down his pipe, and lift up his hands and eyes. Whether he thought I suspected him or no, I can't tell, he best knows his own thoughts.

Att. Gen. Did he say a word of Mr. Hamben?

Dr. Burnet. No, there was not any particular person named.

Mr. Recorder. Doctor, he would not make you his confessor.

Dr. Burnet. His whole hour's discourse was to dispossess me of the opinion and belief I had entertained of the plot.

Just. Holloway. This was about July, you say?

Dr. Burnet. I cannot remember the very day of the month, I believe it was the latter end of June, but I am sure it was before any body was committed, that we heard of.

Mr. Recorder. Dr. Burnet, you say you did believe there was a plot then?

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Dr.

Dr. Burnet. Yes, I did so, and he laboured to dispossess me of that belief.

Recorder. Pray, do you believe it now?

Williams. What a question is that, Mr. Serjeant?

Dr. Burnet. I make no doubt of it, Sir, as to the assassination.

Att. Gen. My Lord Newport, why do you lift up your hands? You don't do well; for it is a very proper question.

L. C. J. Well, call your next witness, gentlemen?

Mr. Thompson. Swear Mr. Gisborne.

[Which was done.

Williams. Pray, Sir, will you acquaint the court and the jury, what you have heard my Lord Howard say about the late conspiracy?

Mr. Gisborne. My Lord only said he knew nothing of the plot; that is all I can say.

Williams. When was this?

Gisborne. The Saturday before he was taken into custody; then it was that your honour did say so, my Lord.

Att. Gen. Ay, and one hundred more I believe would say so, that might be concerned in it for all that.

Williams. Swear Mr. Blake. (Which was done) Pray acquaint my Lord and the jury, what discourse you had with my Lord Howard about his pardon, and what he said to you?

Mr. Blake. My Lord, about the month of October last, my Lord Howard sent to me to know how I did, and desired me to come and make him a visit. The next day I went and waited upon my Lord at his lodgings at Whitehall, and after the compliments passed, my Lord began a discourse of the plot, and I told him, that I heard none of the witnesses had their pardons, but only Keeling the first discoverer. My Lord told me no, but he had a warrant for his pardon, and with that he plucked it out and shewed it me, and I

read it. And then I told him I thought it was of no avail without he had his pardon actually under seal. He said no, but he had their word and honour; but, said he, when I first received the warrant, they said I should not meddle in it till I heard from them again; which I have not yet, and I ascribe it to no other reason but only this, that I must not have it till the drudgery of swearing is over.

Williams. When was this?

Blake. In October last some time. So I then took my leave of my Lord, and my Lord desired me to come and see him at night about six o'clock in the evening, for he had a great many came to him, but then he should be at leisure, and had many things to say to me.

Att. Gen. At that time did my Lord express himself as discontented, and that it was irksome to him to be brought as a witness?

Blake. He only said those words that I have told you, and looked up and turned up his eyes towards heaven when he said so.

Williams. Pray, where is Mr. Benjamin Mercer? Swear him. [Who was sworn.

L. C. J. What do you ask him?

Williams. We bring him to prove that my Lord Anglesey was served with a subpoena, but is so ill of the gout he can't come.

L. C. J. If that be all, there is no question of it, but that he was subpoena'd.

Williams. If your Lordship please, we will prove in what condition my Lord Anglesey is, and then we hope your Lordship will give us leave to prove what my Lord has said concerning my Lord Howard's discourses with him.

L. C. J. No certainly, Mr. Williams, and I am sure you ask it not as expecting it should be granted.

Williams. I lay it before your Lordship and the court.

L. C. J. Ay,

L. C. J. Ay, you lay it before us, but you are a lawyer, do you yourself think fit it should be done?

Williams. My Lord, I must submit it to you.

L. C. J. Come, will you consent, that what the Duke of Monmouth has said, shall be given in evidence, and then I presume the King's counsel will consent to your request?

Williams. I consent? Here is my client, my Lord, in court, I can consent to nothing.

L. C. J. But if so be there be leave given on one side to tell what another person has said, why should not it be consented to on the other side, that it be proved what a third person that is absent has said for them?

Mr. Recorder. Ay, will you consent that we prove what the Duke of Monmouth has said?

Williams. We don't know what the Duke of Monmouth has said.

L. C. J. But you do know 'tis not evidence, nor fit to be granted what you ask.

Jones. You know that 'tis not for your purpose what he has said.

Williams. My Lord, we must go according to our instructions.

L. C. J. But you know the law, why should you offer any such thing? Your offering it will make the *Lay gens* that know not the law, think that the court put hardships upon people, in denying things which you that understand the law know can't be granted.

Williams. I do not press it, my Lord, but leave it with you.

L. C. J. Why do you spend our time in urging things that are nothing to the purpose, and cannot be allowed?

Williams. Now, my Lord, we will go on to another part of our defence, and that is, to call witnesses to the reputation of

Mr. Hambden, and his behaviour, to satisfy you, that he cannot be such a person as the indictment says, and as he must be if it be true what this gentleman my Lord Howard has sworn.

Tompson. We will first examine my Lord Paget. [Who stood up.

Williams. My Lord, we ask you to that question. Have you known this gentleman Mr. Hambden, and what a sort of a man is he?

L. Paget. I have good reason to know him. I have known him a great while, and have always believed him an honest and a prudent man, a man of honour and virtue, and integrity, my Lord; and I have had no reason to have other opinion of him. I know he has been always ever since he came abroad into the world a man that hath loved his study and books, and a contemplative life. And therefore I should not be apt to believe, that he could apply himself to a thing so contrary to his own nature, and to that way that he delighted in, and had always hitherto applied himself unto, I mean, to engage in a design of so much malice and wickedness.

Williams. My Lord, you have had a long conversation with the knowledge of Mr. Hambden, you say. What say you as to his disposition; because this indictment says he is a person of a turbulent, factious, seditious spirit?

L. Paget. I have always known him a quiet peaceable man, not meddling in business, very friendly, free from all turbulence, not of much acquaintance, nor desirous to make much.

Att. Gen. Pray, my Lord Paget, upon the same oath you have taken, have you not at any time heard him express dissatisfaction as to the male administration of the government?

L. Paget. No, never to me in the least.

Att. Gen. Not

Att. Gen. Not at the time of the last Westminster Parliament?

L. Paget. No, I never heard him then, nor at any time else.

Williams. Mr. Hambden was then in France, and not in that Parliament, tho' he was a member. Where is Mr. Pelham?

L. C. J. Here he is. He sits down here. (Pointing to the table.) What would you ask him? [He was sworn.

Williams. Sir, will you please to acquaint the court, what acquaintance you have had with Mr. Hambden, and how long? And what you know of him?

L. C. J. You hear the question, Sir, how long have you been acquainted with Mr. Hambden?

Pelham. I have been acquainted with Mr. Hambden about five or six years, living near him, and all that I could observe from him was, that he was a man much addicted to his studies, kept much at home, and I never observed that he had much acquaintance; but as to the business before you, I know nothing of it, nor ever heard him speak any thing relating to it.

Williams. As to his spirit and disposition, Is he a turbulent man?

Pelham. No, I never found him any thing like it. We never talked together of matters of that nature.

Att. Gen. Were you ever in his company at any time when he discoursed about government?

Pelham. No, I was never with him at any time when he discoursed of any such thing.

Williams. Sir Henry Hobart.

L. C. J. My Lord, we oppose his being a witness. He is one of his bail.

Williams. That was upon the *Habeas Corpus* Act, not upon this indictment.

Att. Gen. If he be bail for the defendant, my Lord, he cannot be a witness.

Williams. I appeal to the rule of court, whether he was not bail upon the *Habeas Corpus* Act only?

Att. Gen. Appeal where you will, the bail cannot be a witness.

Williams. We moved for an *Habeas Corpus* the beginning of last term upon the late act for *Habeas Corpus*'s. And then at the last day of the term upon *Habeas Corpus* he was brought up thither, and was bailed upon that writ?

Att. Gen. Are not you one of the bail, Sir Henry Hobart?

Sir Henry Hobart. I was one of his bail, I think it was for his appearance.

L. C. J. If he be one of his bail that he shall appear in this court the first day of this term, and so from day to day till he shall be discharged, and remains under that recognizance, then in any case against him he cannot be a witness for him.

Att. Gen. But they mistake the matter, he was then charged with this indictment: He then pleaded to it, and was bailed to answer the indictment; and surely in that case he can never be a witness.

L. C. J. That is certainly very true, and you know the law so well, Mr. Williams, that I wonder you will insist of it; in every ordinary case it is every day's practice to deny the bail to be witnesses.

Att. Gen. Here is the person principal, will they render him in custody?

L. C. J. Ay, what say you, will you render him in custody? Then we will discharge the bail.

Williams. My Lord, I will tell you what we will do.

L. C. J. Tell me what you will do! Answer my question, Will you render him in custody?

Williams. We will change the bail, my Lord, and find some other sufficient person to stand in Sir Henry Hobart's place, rather than lose our witness.

L. C. J. With all my heart.

Williams. Here is Mr. Ashurst, my Lord, a gentleman of very good value.

L. C. J. But

L. C. J. But you must render him first, and change the whole bail. They must enter into new recognizances.

Williams. I cannot tell whether we can do that so very well, because the others I am afraid are not all here. He is a mighty material witness, I am sure.

Att. Gen. My Lord, Mr. Williams says he is a material witness, let him be sworn, I am so fair, I will consent to it: Let us hear what he can say.

[Which was done.]

Wil. We thank you, Mr. Attorney. I am afraid you will not live long, you are so good natured.

L. C. J. But you are like to live for your good-nature, Mr. Williams.

Thompson. Sir Henry Hobart, how long have you been acquainted with this gentleman, Mr. Hambden?

Sir H. Hobart. I have known him any time these ten years.

Wil. How has he been, Sir, as to his disposition and spirit? Did you ever find him to be of a turbulent temper?

Sir H. Hobart. Very far from it always.

Wil. Have you had any intimate conversation with him?

Sir H. Hobart. I have known him all along, I say, these ten years, but of late I have had more converse with him some few years in travel.

Wil. Had you much conversation, Sir?

Sir H. Hobart. I was with him continually at Paris, and abroad.

Wil. What say you to his loyalty and principles? Was he a factious, seditious person?

Sir H. Hobart. Sir, he always expressed a great esteem for the government, and great respect and duty to the King.

Wil. Pray, Sir, when went Mr. Hambden abroad to go into France?

Sir H. Hobart. He went into France for

his health about November (80) I think it was.

Wil. How long did he continue abroad, Sir Henry?

Sir H. Hobart. I found him in Paris the May after.

Wil. How long did you tarry there, Sir, yourself?

Sir H. Hobart. I went from Paris in June, and came back again to Paris about October or November the same year, and I found him in France still.

Wil. And when do you take it he returned into England?

Sir H. Hobart. I was with him till he came over, which was about September, (82) I think.

Thompson. What do you know, Sir, of his intentions to go again beyond sea?

Sir H. Hobart. When, Sir, do you mean?

Thompson. Since that time he came over, you say in September (82.)

Sir H. Hobart. He told me of it often, I think it was about March, more particularly once at his own house.

Thompson. What March, Sir?

Sir H. Hobart. March (83.)

Thompson. That is last March?

Sir H. Hobart. Yes, last March, he talked of it several times, particularly once I went about some business of my own, and then he discoursed a great deal of his going over with my Lord Montague that now is; for he told me his health was not yet established, for he came over out of an hot country in autumn, and had been all the winter in this colder country, and the air he found had impaired his health again. And it was not only what he told me, but I had a letter from a friend of mine in France, to whom I had sent to desire him to come over; but he writ me word, no, Mr. Hambden was coming over again, and he would not come back yet.

Att. Gen. Did he tell you when he intended to go over, Sir Henry?

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Sir H. Hobart.

Sir H. Hobart. As soon as Mr. Montague, my Lord Montague that now is, could get ready, who was to carry his lady over with him.

Williams. Sir, do you know of any preparation made by Mr. Hambden for it?

Sir H. Hobart. He had resolved to take his lady with him, because Mr. Montague's lady went, and so I believe did prepare accordingly.

Att. Gen. Did Mr. Montague go over?

Sir H. Hobart. He did not go then, but since he is gone.

Att. Gen. Were you in France then at this time?

Sir H. Hobart. This was in England at his own house.

Williams. Pray, Sir, what is his disposition?

Sir H. Hobart. He was always inclined to a studious life, and kept very little company.

Att. Gen. Was this in March 83.

Sir H. Hobart. Yes, he came over in September before. I always observed him to be of a retired temper.

Att. Gen. You say in 1680 he went into France, and in (82) he came over again?

Sir H. Hobart. Yes.

Att. Gen. Pray, Sir Henry, since you conversed so much with him; have you heard him since the last Parliament at Westminster, or at any time have you been by when he hath discoursed his opinion about government?

Sir H. Hobart. Truly, Sir, I do not take myself to be capable of discoursing with him about any such matters.

Att. Gen. Have you heard him at any time complain of the male-administration of the government?

Sir H. Hobart. No, Sir.

Att. Gen. Have you never heard any such thing from him?

Sir H. Hobart. No, never.

Williams. Swear Dr. Lupee—My Lord,

we must desire an interpreter, for the Doctor speaks French only.

L. C. J. Swear an interpreter.

Williams. Dr. Burnet, or if he be gone, call Sir Henry Hobart again. We must beg the favour of you, Sir Henry to be an interpreter, you understand the French tongue very well.

Sir H. Hobart. I will do it with all my heart, Sir, as well as I can.

L. C. J. Swear him.

Then the Doctor was sworn, and the oath repeated to him by Sir Henry Hobart in French.

Cryer. You shall well and truly interpret between the court and the witness, and the witness and the court, according to the best of your skill and knowledge: So help you God.

Thompson. Sir Henry, will you please to repeat what questions we shall ask, and what answers he makes?

Sir H. Hobart. Yes, Sir, as well as I can, I will.

Williams. Pray, Sir, ask the Doctor this question, if he be acquainted with Mr. Hambden?

Sir H. Hobart. Yes, he says, very well. He lived near two years with him.

Thompson. How long is it since?

Sir H. Hobart. Four years since, he says.

Williams. Pray in that time, what was his disposition? was he a seditious and turbulent man? or was he a studious retired man, or what?

Sir H. Hobart. He says the two years he lived with Mr. Hambden, he kept him company in his studies, and all that time he found he had no other inclinations but for study and knowledge, and his inclinations were very virtuous. He always observed in his discourse a great submission and respect that he had for the laws of his nation,

nation, and his Prince, and to that degree he was a faithful subject to the King, that once he told him in discoursing with him of the late Popish plot, that he was ready to sacrifice his life and fortune for the King's service.

Thompson. Ask him what discourse he had with him of the plot since it brake out ?

L. C. J. Will that be any evidence do you think, Mr. Thompson ? Will Mr. Hambden's declaration be any evidence, he being a person accused ? Do you think he would tell the Doctor, or any body else that he was guilty, when he was like to be questioned ? That would have been a wise business indeed. You say, he was a very studious man, and a learned man, truly if he had done that, he had bestowed his time in learning to very good purpose.

Williams. My Lord, that that we would ask him is this ; This person the Doctor being discoursing with Mr. Hambden upon the discovery of the late conspiracy, and of the dangerousness of the time, he would have advised Mr. Hambden to have gone ; no, he said, he would not, for he was an innocent man, and would not stir.

L. C. J. Well, ask him what you will, but his declaration of his own innocence cannot be taken for evidence.

Sir H. Hobart. He says, since this plot was discovered, he was going one day to visit Mr. Hambden, and going through Long-acre, he met a French minister, a Savoyard minister—But, my Lord, he speaks so fast, and goes on with so much at a time, that I cannot remember it all.

Williams. Well, what said that minister to him ?

Sir H. Hobart. He says, this minister asked him, if Mr. Hambden was not concerned in the plot, and upon that he went and told him what the minister had said to him—He says, he told Mr. Hambden, that the Duke of Monmouth and my Lord

Grey were hid—He says, upon that, Mr. Hambden said to him, I will never fly, nor conceal myself, for my conscience reproaches me in nothing.

L. C. J. Ask him why does he think the French minister, the Savoyard as he calls him, should ask whether Mr. Hambden were in the plot ?

Sir H. Hobart. He says, Mr. Hambden said he would rather die innocent than fly with the imputation of guilt upon him.

L. C. J. But ask him the question I put, Why should that Savoyard parson say so ? What reason had he to think Mr. Hambden was in the plot ?

Sir H. Hobart. He says the minister did ask him, but he cannot tell what reason he had to think so.

Att. Gen. Pray, Sir Henry, ask him this question ; How long ago it was since he left him ?

Sir H. Hobart. Four years, he says.

Att. Gen. Where was it, in England, or France,

Sir H. Hobart. Whilst he lived in Bloomsbury, he says.

Williams. Call Dr. Needham and Monsieur Justell (who appeared) and Monsieur Justell was sworn. Pray Sir Henry Hobart, will you ask Monsieur Justell who speaks French too, if he knew any thing of Mr. Hambden's resolution to travel with Mr. Montague into France ?

Sir H. Hobart. He says, yes. He did tell him he was going into France, and he offered to carry some books for him along with him.

Williams. What company was he to go in, and what time ?

Sir H. Hobart. He says, Sir, he cannot be exact to the month when Mr. Hambden spake of going over, but he says, it was a great while before this plot came to be discovered.

Williams. Was it some months before ?

Sir H. Hobart.

Sir H. Hobart. It was a month before it was known, he says.

Williams. In what company was he to go?

Sir H. Hobart. He said he was to go with Mr. Montague.

Conyers. Pray, Sir, will you ask him, was he employed to get any French servants to be with him?

Sir H. Hobart. Yes, he says.

L. C. J. Ay, but what was the question; for there is such a crowd of people before the counsel, that the court cannot hear Mr. Conyer's question.

Conyers. My Lord, I asked him, whether he was employed to get any French servants to be with Mr. Hambden?

Sir H. Hobart. Yes, he says.

L. C. J. Well, there is Dr. Needham, what do you ask him?

Then Dr. Needham was sworn.

Williams. We call Dr. Needham for this purpose, my Lord, to prove that these gentlemen that are accused, Mr. Hambden and my L. of Essex, and the others, had very little esteem, and mean opinion of my Lord Howard. And how one, they so little esteemed, should be let into so great a secret, will be very strange to imagine. Dr. Needham, pray, what can you say of any of these gentlemen's opinions of my Lord Howard? What opinion had my Lord of Essex of him?

L. C. J. Is my Lord of Essex now before us? What is that to this case, Mr. Williams? Let my Lord of Essex have what opinion he would of him; how does that concern the defendant?

Williams. I tell you why, I offer it to my Lord—

L. C. J. But pray, offer what is evidence, and keep to the business before you.

Williams. *Falsus in uno, falsus in omnibus*. If we can prove that what he hath

said of my Lord of Essex is false, he is not to be believed against the defendant.

Att. Gen. Ay, but upon the evidence of my Lord Howard, all the rest were convicted.

Williams. I offer it only upon what is here to-day before you. He says, my client, and my Lord of Essex were confederate with him upon such a design. Now if my Lord of Essex was not there, then he is false in that, and that he was not we offer this as evidence—

L. C. J. But it is not a proper evidence in this case.

Williams. It is a sort of evidence—

L. C. J. Ay, it is a sort of evidence, but it is not to be allowed. If you will prove Mr. Hambden's opinion, you may, but you must not for him bring proof of what my Lord of Essex, a third person, thought of my Lord Howard.

Williams. I only offer it thus—

L. C. J. Offer what is evidence, man! You are a practiser, and know what is evidence, but you have offered two or three things to day, that I know you do at the same time know is not evidence, and I speak it that it may not be thought we deny you or your client any thing that is according to the course of law. You that know the law, know that it is so as we say. Mr. Attorney has gratified you in waving three or four things already, but nothing will satisfy, unless we break the course of other trials.

Williams. My Lord, what I take not to be evidence, I do not offer, and where the court over-rules me, I have not insisted upon it.

L. C. J. No!

Williams. No, my Lord.

L. C. J. But you would have insisted upon it, if Mr. Attorney would have been so easy as to consent; and the court would have let you. Pray keep to the business

business, and the methods of law; you know the law very well.

Williams. My Lord, I humbly apprehend this may be evidence, and I lay it before you. My Lord Howard has proved that my Lord of Essex, and five more, of which Mr. Hambden was one, met and consulted about such matters. We may, I hope, be admitted to prove, that my Lord of Essex was not there; for if we can take off his positive proof, as to any one of the circumstances, we take off from the truth of the fact. If all the persons were not there; then my Lord Howard is mistaken in that, and accordingly must not be believed in the rest; therefore, my Lord, I press it no otherwise: He hath proved the six persons were there. I offer this as some evidence, that it is unlikely it should be so, because my Lord of Essex had so little opinion of my Lord Howard, that he would never consult with him about any matter.

L. C. J. Then certainly my Lord Howard is to be believed, to all intents and purposes, for here is a record of the conviction of my Lord Russel, and of Colonel Sidney, and all upon the testimony of this gentleman, my Lord Howard, and is not that more to support his credit, than a flying report of a third person's opinion of him. And yet after all, we say, it is no evidence against Mr. Hambden, and has been waved by Mr. Attorney.

Williams. Then I will not press it, my Lord.

Just. Withins. It is no evidence, certainly, Mr. Williams.

L. C. J. It seems my Lord Essex had such an opinion of my Lord Howard's evidence, that he thought fit to cut his own throat, rather than abide the trial.

Williams. Call Mr. Murray.

L. C. J. Suppose my Lord of Essex had said, that he was out of the plot, and Mr. Hambden was in, would that have been

good evidence against Mr. Hambden, do you think? Pray mind what is the business before you?

Williams. Swear Mr. Murray. [Which was done.]

L. C. J. Well, what do you ask this man?

Williams. My Lord, we call him as to what I opened of my Lord Howard's opinion of the word to come, and rewards and punishments there.

L. C. J. Mr. Williams. Pray take notice of this, private discourses that people cannot come to make answer unto, because they cannot imagine to have them objected, are a very odd sort of evidence.

Williams. Therefore I opened it warily and tenderly, my Lord, the witness will tell you the story better than I.

L. C. J. I cannot tell what Mr. Williams has said, or I have said in heat of talk or vanity. God knows how often all of us have taken the great name of God in vain: Or have said more than becomes us, and talked of things that we should not do.

Att. Gen. My Lord, how can my Lord Howard be prepared to give any answer to this?

L. Howard. My Lord, this presses hard upon my reputation. I profess before God I do not know this fellow, I never saw him in my life before as I know; but a company of impudent fellows take the liberty of saying what they please.

L. C. J. To rake into the whole course of a man's life is very hard.

L. Howard. I would fain have these fellows dare to say this any where else of me.

Williams. Well, my Lord, we will wave it.

L. C. J. They do not think it a fit thing to press it.

L. Howard. But my Lord, it concerns me in my reputation; who is this rascal they bring here? God's life, who is he?

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L. C. J.

L. C. J. We must be tender of men's reputation, and not let every thing come as evidence when it is not fit to be evidence, to put slurs and scandals upon men that they cannot be prepared to wipe off. Is he convicted of any crime? If he is, you say something, shew the record of it.

Just. Withins. Mr. Williams. You know the case adjudged lately in this court, a person was indicted of forgery, we would not let them give evidence of any other forgeries, but that for which he was indicted, because we would not suffer any raking into men's course of life, to pick up evidence that they cannot be prepared to answer to.

Williams. We have that respect for my Lord's honour too, as not to press it, only we had it in our briefs, and we must go according to our instructions.

L. Howard. I desire to know who that rascal is; what is he? where does he live? I will make him an example.

L. C. J. Pray compose yourself, my Lord, there is nothing of this pressed.

L. Howard. To say I am an Atheist, my Lord! what can be a greater reflection?

L. C. J. He has not told us any such thing as yet. And we will take care that nothing shall be offered but what is fitting.

L. Howard. I vow to God, my Lord, I do not know the man.

L. C. J. My Lord, do you think that every thing that a man speaks at the bar for his client and his fee, is therefore to be believed, because he said it? No, the jury are to take nothing here for evidence to guide them of what the counsel say, but what is approved. They are to judge *secundum allegata & probata*, that is their duty.

L. Howard. Does that fellow look like a man of that figure, that I should say any thing, or have any conversation with him?

L. C. J. My Lord, I do not know what he is. Go on gentlemen.

Williams. My Lord, we have done with our evidence. If Mr. Attorney will leave it here, we will.

Att. Gen. My Lord, we will not mistrust the evidence, nor the court.

Hambden. My Lord, I desire to speak a word myself, if you please.

L. C. J. Ay, in God's name. You, or your counsel, I will hear all you will say, and as long as you will speak, provided you speak within the bounds of decency.

Williams. My Lord, I think it best to leave it to the court: We hope we have made it clear that our client is innocent.

L. C. J. Would to God you were innocent, that is the worst wish I wish you, but we will either hear him or you speak, speak as long as you will.

Wallop. My Lord, I desire to make but one observation.

L. C. J. Ay, in God's name make what observations you will, Mr. Wallop, I hindered you from making your observations at first, because I knew it would be desired after the evidence was over.

Att. Gen. Then my Lord, I expect to be heard too. If Mr. Hambden makes a speech, I will reply, or if his counsel do it, I expect the last word, for I will have neither the party, nor the counsel to speak after I have summed up the evidence for the King. Mr. Hambden, and his counsel are all one.

Wallop. I have but one short observation to make.

L. C. J. Go on then, Mr. Wallop, and say what you will.

Just. Withins. I think it is very fit you should do it of both sides; it is a cause of great concernment.

Williams. My Lord, we will leave it here, I think.

L. C. J.

L. C. J. Take your own course, do not say we hinder you of saying what you will for your client.

Att. Gen. Let them do what they will.

L. C. J. I will sit still, make speeches every one of you as long as you will.

Just. Wakot. It is fit they should speak what they can for the advantage of their client.

Williams. My Lord, we leave it to the court.

L. C. J. Gentlemen of the jury, the evidence has been something long, and the counsel both for the King, and for Mr. Hambden, against whom this indictment has already been found by the Grand Jury, having left it to the court to sum all, I shall do it as well I can; and the question before you, gentlemen, is, Whether the defendant be guilty of the offence charged in the indictment, or not guilty, and there having been so long an evidence on the one side, and on the other, it will be fit for me according to the best of my remembrance to help your memories, by recollecting what has been said on both sides, which I shall do as near as I can, and if my brethren will please to supply any thing that shall be omitted by me, nay, if the counsel for the King, or for the prisoner, will put us in mind of any thing that has been spoken, and proved either against, or for the party indicted, in God's name let them have liberty to speak it: For it is fit the question should be left before you with all fairness, and according to the best of my observation and memory, thus it stands.

The first thing, gentlemen, that is considerable to you, is, that there is such an indictment, as has been already opened unto you, that is preferred against Mr. Hambden, that does set forth, that Mr. Hambden is a seditious person, and a man, according to the language of the indictment (which are words of course and form in an indictment of this nature) of an evil dispo-

sition, designing to disturb and distract the government, and that he with several other persons, did conspire to bring in troubles, and perplexities upon the government; and in order to that, that there were some meetings between him and several other persons, and that there was a design to conciliate some persons of another nation to go along with them in their design, particularly some in the kingdom of Scotland. This is the purport in the indictment, to which the defendant has pleaded not guilty.

Gentlemen, the evidence for the King has been of this sort, They did at the beginning, which yet I must tell you by the way, is not any thing of evidence, but the King's counsel would make some overtures to press on their side, as the defendant, and those that are of counsel for Mr. Hambden, have made some little hints to press on their side, that some witnesses the one and the others would have had here, were subpoena'd but could not be here. It seems by the proof, here was a meeting, as it was between six several persons, and they name them, the Duke of Monmouth was one, the Lord Howard another, the Lord Russell a third, the Earl of Essex a fourth, Algernone Sidney a fifth, and Mr. Hambden the sixth. As for my Lord of Essex he is gone to his long home, my Lord Russell, and Mr. Sidney have received sentence, and been executed. So there remains three surviving, and say they that are for the King; we produce my Lord Howard, and we have taken care to summon the Duke of Monmouth, by leaving subpoena's where it could be thought he was to be met with, with promises of his servants to deliver them to him in order to have the Duke to be a witness for the King this day. I presume the meaning is, they would infer from that, that they would give an account of the fairness of this proceeding, though it has been a matter that has obtained a sort of belief

belief in the world, as though the Duke of Monmouth had denied, that there was any such thing as this confederacy and conspiracy : And that has given people occasion to be of very different opinions, and persuasions about the matter ; but say they, to shew we are not afraid to have the truth come out, we have done as much as in us lay to get this person hither ; therefore we have left subpoena's at his houses, at his lodging with his servants, and they have promised to take care they should be delivered to him, and he is not come. Against this on the other side, say they, for the defendant, we have taken all the care we could to bring my Lord Anglesey, who was to have been a witness for the advantage of the person indicted, but my Lord Anglesey is at present afflicted with a fit of the gout, and for that very reason we cannot have him here. And so they shew, that they have been very zealous to get witnesses on their side to vindicate their reputation, but they did not meet with that effect that they desired. These two things, gentlemen, are matters that are used both against him one way, and for him another.

But now to come home to the evidence upon which this matter is to turn, and here you are to consider, that whatsoever has been said or offered by the King's counsel on the one side, or the counsel for the defendant on the other side, (I call him so, for it is but a trespass though a great one) you must not take into your consideration at all any further than as their allegations are supported by the testimony that has been given ; and whatsoever the witnesses have said either for or against him, and out of that testimony as near as I can remember I will give you the objections, and their answers with the observations that have been made, or do naturally arise out of the facts in proof.

My Lord Howard, in the first place, gives an account of this matter, and, gentlemen, the times will be wonderful material, and therefore I beg you would take a pen and ink, and mark these material circumstances as you go. For in all matters of fact positively proved, which also have their credit supported by circumstances which do accompany them, the testimonies given of such facts are to be valued according as those circumstances keep touch with, and humour, as I may so say, the fact that they are to evidence the truth of.

My Lord Howard does therefore in the first place acquaint you, that about Michaelmas there was a discourse between him and my Lord of Shaftsbury, and that was concerning a rising intended to be had, and he tells you how that my Lord Shaftsbury was fully resolved upon it ; that things at length came to that pass, that he was forced to go from his own house, as he said, being disappointed by the Duke of Monmouth and others who had promised to join with him, and was retired to the house of one Waton in or near Woodstreet. But he understanding where he was, my Lord Howard went to him, (I think he says my Lord Shaftsbury sent to him) when he came, Lord Shaftsbury told him, that although there had been such a disappointment by those persons he named, yet that did not take off his edge, but he was resolved to go on himself, nay, though his body was infirm, yet he would be set on horseback, though he was lifted up to appear in the head of a party that he had prepared, and were ready when he would call them. And he began then to reflect upon the disappointment of the Duke of Monmouth, and as though the Duke of Monmouth had only a prospect to advance himself, and had only an eye upon his own particular interest. That he so managed matters as if he designed to have the sole disposition of all things whatsoever, and

and began to be uneasy with the Duke of Monmouth. My Lord Howard did endeavour to have prevailed with my Lord of Shaftsbury for a reconciliation between the Duke of Monmouth and him, it being a matter that required so much safety and security, and did desire him that he would have some intercourse with the Duke of Monmouth in order to conciliate a friendship between them, that they might go hand in hand. You find he was under some difficulties about this matter, he was not able to bring the thing about; for after he had spake with the Duke of Monmouth, and prevailed with him, my Lord of Shaftsbury was peevish, and talked at a distance, and when he had appointed a meeting one time, it was prevented, my Lord Shaftsbury went away into Holland, and there died in Holland. This is the substance of what my Lord Howard says as to that matter.

But, gentlemen, this is material; and I will tell you why I think it material; because the counsel for the defendant have made it an objection particularly to my L. Howard's testimony, that my Lord Howard is particular as to the day after Michaelmas-day, but he is not so particular when he comes to speak of other times upon which the true question before you depends. For now he speaks more generally as to the meetings at the defendant's, and my Lord Russel's, that they were about the middle of January and the beginning of February, and is not particular as to the day. I speak of this because that has been made use of as an objection against my Lord Howard's testimony. And I will tell you as near as I can all the objections that have been made against this testimony after such time as I have settled it and laid it before you what the whole of it amounts to.

Then comes my Lord Howard and says, that meeting with the Duke of Monmouth some time after this they began to talk to-

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gether, and they thought that though the business had failed in the managery of my Lord of Shaftsbury, yet it was fit there should be a re-assuming of the business again, but in order to settle matters that things might not go inconsiderately on, it was thought fit that they should resolve themselves into a certain number that were confident one of another, in order to steer and transact these matters the better among themselves. And they must be persons fit to be trusted and for whom there should be an undertaking among them for their faithfulness and integrity; for all persons are not fit to be trusted; but only such as they agreed upon. The Duke of Monmouth he undertook for my Lord of Essex and my Lord Russel, those were the persons for whom he would engage, as likewise for my Lord Salisbury. And then they began to talk of some more, particularly of Mr. Sidney, but he was a cynical man, and a philosopher, and they were first to come to him, and to treat with him in another manner than the rest. He was not to appear as the Duke of Monmouth, but to take him in his retirement and privacies, and then they might be the better able to break the matter to him. And he says accordingly there was a time designed on purpose, and at that same time the Duke of Monmouth and my Lord Howard did go and attack Mr. Sidney, they found him on a private day, and dined with him; and upon that dinner the whole matter was broke up, and put into some method; then was the whole design contrived as to the persons that were to be engaged in this matter; and he says, they agreed upon six. The Duke of Monmouth undertook for my Lord of Essex, and my Lord Russel and Col. Sidney undertook for Mr. Hambden. He speaks of my Lord of Salisbury, but my Lord of Salisbury was never there among them, and so I put him out of the case, I quit him from being of their number.

ber, because they were but six in all, my Lord of Essex, and my Lord Russel, who were undertaken for by the Duke of Monmouth, Mr. Hambden undertaken for by Mr. Sidney, and my Lord Howard; for by that time Mr. Hambden was come into the matter upon Colonel Sidney's undertaking.

Now we are got, gentlemen, by these steps till we come about the middle of January; but, says my Lord Howard, I cannot positively say, it was this day, or that day of the month; but being about the middle of January, I conjecture it was about the 14th, but he is not positive to the day. He says, accordingly they went to Mr. Hambden's house, which was the place first designed for them to meet in. He says, there accordingly they did all six meet; and that it being Mr. Hambden's house, they thought it most proper for him who was master of the house, who usually bids his guests welcome, to break silence, and to impart the business of the design they met about. He says, accordingly Mr. Hambden, after the first compliments of entertainment, did give an account of the business they were come about, and that it was in order to have a rising. This, he says, was proposed by Mr. Hambden. He tells you, then they fell into debate about the time when, concerning men, and arms, and money; and likewise concerning the places. He tells you the places wherein the rising was designed to be, were Devonshire, Cheshire, Somersetshire, and other places, that is, as to the circumstance of the place. Then he tells you concerning the time; it was debated, whether it should be all at one time, or at several times? Whether they should only begin here, and the country fall in, or all at once? That likewise they had in consideration the business of money, and that his Grace the Duke of Monmouth did speak of thirty or thirty-five thousand pounds, or

some such sum at that time. But then, as was natural for men of deliberation and consideration to consult about, they took into debate that they might not go headlong, to endeavour to conciliate another party to chime in, as he says, along with them, in the business they were going about, and accordingly it was thought fit and proposed, that there should be an endeavour to conciliate a friendship with some persons in Scotland to fall in with them; and then he tells you, who the persons were that were named: Some of the names he remembers, and others he has forgot; he speak particularly of the Campbells, Sir John Cockram, and my Lord Melvin: And he says, other persons were mentioned, but he can't remember their names; and my Lord Russel knew some of these persons, and the Duke of Monmouth knew some others of them, because of his near relation to the Earl of Argyle, the person that you know was proscribed for treason in the kingdom of Scotland. He says, that so far the debate of this matter went, that they thought fit a messenger should be provided, a trusty man to be sent into Scotland to treat with these gentlemen about this matter; and my Lord Russel, I think he says, undertook to write a letter to be carried by this messenger to these Scotch gentlemen.

He says, pursuant to this consultation at Mr. Hambden's, a fortnight after, or thereabouts, which brings it up to the beginning of February, then was the meeting at my Lord Russel's house, and there they debated these matters over again, and the whole managery of sending a messenger into Scotland, was left to the discretion of Col. Sidney, and he undertook that work, that was his post that he was to manage; and he does say, that he does very well remember, that Aaron Smith was the person proposed then; and though he was unknown to some of the company, yet he was well known to others;

others; and by reason of that knowledge that others had of him, they looked upon him as a person very fit, and every way qualified for it.

So that, gentlemen, here is proved a consultation in order to the raising of men to infest the government; a discourse concerning money and arms for this end, and the places where, and the time when; and of conciliating a friendship with some discontented persons in Scotland, to join, and chime in with these conspirators in England.

And then there is yet another circumstance very remarkable, because though my Lord spake it not at the same time that he delivered his testimony; yet upon the question asked, he gives you a plain account of it; and it has a plain dependance upon what went before. Said they among themselves, 'tis proper for us, as near as we can, to shut the door against any exceptions about these men's coming to treat with us; but how shall we get them hither without suspicion? We must have some shams, or cant or other, to be a pretence for these people to come into England; and that was agreed to be about some plantation in Carolina.

This, he says, was the result of that meeting; and that when the meeting was broke up, about three or four days afterwards (mind the circumstance of time, gentlemen, for 'tis very material) Col. Sidney and he met together, they went to Col. Sidney's house, and there he saw him take money out of a till, where there were several hundreds of guineas, or pieces of gold; and as he believes, he says, he took threescore guineas, or some such sum; and told him, it was to give to Aaron Smith in order to his journey into Scotland: That he went out with him in his coach, but Mr. Sidney set him down by the way, and he himself went into London, telling him, he went to that purpose, to give Aaron

Smith the money. Some time after, about a week, or a fortnight, or ten days after that, he says, he met with Mr. Sidney again; and he says, Mr. Sidney gave him an account, that he had heard Aaron Smith had been at Newcastle, but he had not heard of him since that time, and that is another circumstance in point of time, gentlemen; so that you have here a positive oath made by my Lord Howard, that Mr. Hambden was privy, and consenting to all these debates; as to the raising of men, and the levying of money, and about the conciliating a friendship with these men of Scotland, and about sending a messenger into Scotland to that purpose. And if my Lord Howard do swear true, no man living can doubt but that Mr. Hambden is guilty of this indictment. The first meeting was at his house, and there he did take notice of what had been formerly done, and proposed the things, breaking the silence, and entering into the debate; which shews that he had been discoursing about it before, and had it in his thoughts before, or else he could not have propounded it as the end of their meeting.

Now this, gentlemen, here is a positive fact; and, as Mr. Williams says true, no man living can give any answer to a positive fact, but by some other things that may be circumstances to oppose that fact. Now he says, there are no circumstances that have been proved, that will give any credibility to what has been deposed, besides the positive oath of my Lord Howard. So that, says he, your fact, though it be positively sworn, is not supported by any circumstances of the fact, that may give credibility to it. And he objects very materially; for if it be not supported by credible circumstances, then indeed it would be less material; yet I cannot say, it would not be at all material; it is material, and you are to determine, whether you have sufficient evidence given you, to induce you to believe,

lieve, that my Lord Howard is at this time guilty of wilful and malicious perjury; for it is perjury, and that in the highest degree, if it be not true that he says; and God deliver all mankind from being guilty of any such thing. I leave that to your consciences, gentlemen, who are the Judges of it.

But says the King's counsel, here are circumstances that do support our fact, and the credibility of it. For, 1st, here is the circumstance of Aaron Smith, who was sent into Scotland by Mr. Sidney in pursuance of this design, and this circumstance my Lord Howard does subjoin to what he has positively affirmed against the defendant. And this circumstance is a thing that may be helped by other proof; and what is this circumstance? Say they, that Aaron Smith was sent into Scotland; and in order to prove that, they have called one Sheriffe, who is a man that keeps an inn at the Post-house in Newcastle, from whence Colonel Sidney told my Lord Howard he had notice of his arrival at Newcastle, but had heard no more of him after that. And this Sheriffe swears directly, I saw that man they call Aaron Smith, when he was shewn to me before the King and the council; and Mr. Atterbury swears he shewed Aaron Smith to him, and then Sheriffe swears, that man you shewed to me, was the man I saw at my house at Newcastle, that chimes in with the circumstance of fact that Mr. Sidney heard from him at Newcastle. And then there is the circumstance of time when he saw him there; says he, I saw him the Friday before Shrove-Tuesday, which they in the north call Faster's-Even. He came to my house on Thursday night, and went away the next day, Friday; and he went with his guide, the other man, northward, in order to his journey into Scotland, as he himself said. Says he, I remember the time very particularly, it was the Friday before Shrove-Tuesday last,

this February was twelvemonth; and he went yet further; says he, I did not only see him when he went away, but when he came back again, for he left his man at my house all the time, and he tells you what his name was; for he says, Smith went under the disguised name of one Clerke, and he did then talk of going to the western parts of Scotland, he named Douglas as he thinks, though he is not positive in that, but he is in the person, that was the man. And says he, I sent for this person, the other fellow, Bell, and he was the guide he had along with him. And upon Bell's examination, what says he? Says he, I remember that man came thither at that time to the other man's house; I take it upon my oath that is the man, and he went by the name of Clerke, he hired me to be his guide; I went out with him on Friday morning, and I went along with him all that day; but upon Saturday, which was the next day, going northward with him, my horse tired, and failed me. Thereupon I was forced to be left behind, but I overtook him on Sunday night following; I overtook him at such a place, and saw him within six miles of the borders of Scotland. I take it upon my oath, this is the man that was there under the name of Clerke; and at his returning back again, I took notice of him, I went up to him, I drank with him, and we had discourse of our journey. He told me at first, he was to go to the west of Scotland, and so he went northward. After that, which was about ten or twelve days, he came back again, and so went southward towards London. This he doth swear directly to be at that time.

Now, gentlemen, the time is wonderful material in that case, because that very time twelvemonth that they talk of, is the beginning of February. If you look upon your old Almanack of the last year (I happen to have one in my pocket, and look upon it, when the men gave their testimony) and

and there you will find, that the Monday before Shrove-Tuesday, when he says, he left him within six miles of the borders of Scotland, falls out to be the 19th of February; I will look upon it again, lest I should mistake; 'tis just so, and that humours the time that my Lord Howard speaks of, which was about the middle of February, a few days after, that he says the money was given by Mr. Sidney; and then for the time for Aaron Smith to get to Newcastle, there is a fit space of time, for it falls out that the Thursday that he arrived at Newcastle, is the 15th day of February, and so it falls in well with my Lord Howard's testimony, and so the Monday that he parted with him at the borders of Scotland was the 19th, which also just humours the time that he speaks of. So that here is a circumstance of fact to confirm his testimony, both as to the sending the messenger, and the circumstance of time. That he is the same man is proved by these two witnesses, who agree in this, that he was there about such a time; and it does likewise humour that other circumstance of place, that Mr. Sidney said he had heard from him from Newcastle, but not since; and then there is the other circumstance which backs and confirms all, there was not only a sending for these persons, but there is notice taken that these Campbels, who were to be assisting in this matter, were to come about the sham, and under the disguise of purchasing plantations in Carolina. About the beginning of June they come to town, the two Campbels, Sir John Cockram, and Mr. Monroe. Sir Andrew Foster he tells you, he met with some of the men, and they told him, they came about the business of Carolina; and so the cant of Carolina is made good in this circumstance that way; but when the plot brake out, these men sculk, one flies one way, another another; some were taken as they were escaping away by water; others

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of them were taken upon the bed at noon-day in Moorfields: Had the business they came over into England about, been a fair, and a lawful, and honest business, why should they hide themselves? Why should any man sneak and sculk, and be ashamed to own an honest and lawful business? But this does humour and touch the thing exactly, as to that circumstance, that Carolina was only a cant for to disguise their coming over. These are the only two circumstances that seem to be pretty strong for them, to prove and support the credibility of what their witness has sworn.

For, gentlemen, what a wonderful sort of expectation would it be, that we should never convict a man of high-treason, unless you can bring a man to be a witness that is not concerned? For then all these persons must have been acquitted, for they intrusted none, it seems, but these six, they took care they would keep it amongst themselves. Do you think they called their servants to be witnesses of what they were about? That is a vain and idle imagination. In the Popish plot, what witnesses of it had you there? Were they strangers to the plot? No, you cannot expect any witnesses but such as the nature of the case will bear.

This is the meaning of the evidence that has been given for the King, and it carries a great weight in it. But they have made an objection, which indeed is not remote; but may concern the question very much. Say they, if we prove my Lord of Essex was not there, or such an one was not there, would it not discredit the evidence of my Lord Howard? Yes, certainly, it would wholly discredit it, and he were not to be believed at all; nay, which is yet nearer to the question, if Mr. Hambden that had notice all along of the times fixed wherein this transaction was, to wit, about the middle of January, and beginning of February. For because they talk

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of the prints, Mr. Hambden had from them sufficient notice and intimation of the time. If Mr. Hambden that hath had all this notice, could have proved before you, that he was in France, or any other place at that time, that had been wonderful material. But all the circumstances that are any way significant to support the credit of this matter, are very well proved; and so the testimony of my Lord Howard is, by these concurrent circumstances of fact, sufficiently supported.

Now, gentlemen, I must tell you, this being the substance of the evidence for the King; I will now, as near as I can, give you an account of the evidence for the defendant; it was opened by Mr. Williams very ingeniously for the advantage of his client, as every man is bound to say what he can for his client. He made a great many objections against my Lord Howard; so if he could but shake the testimony of my Lord Howard, then he might easily bring off his client; and if you, upon any thing that has been offered, either in evidence, or by way of observation fairly made from the evidence, do believe my Lord Howard has forsworn himself, you must find Mr. Hambden, the defendant, Not Guilty; but if you believe he has not forsworn himself, you must find him Guilty. So all our matter is reduced into a very narrow compass; and therefore I must repeat it again what I said at the beginning. If my memory do not serve me to recollect all right, the counsel for the defendant shall have free liberty to inform the court of what has been omitted.

First, says Mr. Williams, my Lord Howard was a man very deep in a conspiracy with my Lord Shaftsbury, by his own acknowledgment, endeavouring to conciliate a friendship between the Duke of Monmouth and my Lord Shaftsbury; and so he had a great hand in the plot; and what he might do on purpose to get him-

self out of danger from that plot, and procure his pardon, is not known.

It is a very strange thing, that it should be an objection before he had his pardon, that he did it for fear, and to get his pardon; and when he has it, now the objection is, because he has his pardon; and he got it, say they, by this means. It seems, whether he had his pardon or no, it must be an objection against him: Before he had it, he was under the fear of not obtaining it till the drudgery of swearing was over; but now he has his pardon, what now? Why he does it on purpose to accuse other people. Why, he says no more now, than what he has said before he was pardoned; and if after he is pardoned, when he is under no dread or fear because of his guilt, he says the same things that he did when he might be in fear, how can that be an objection to him? It cannot be thought he does it to save his own life, for that is as safe now by his pardon, as it can any way be; and 'tis, and must be a great satisfaction to his mind, and will be so to any other reasonable man's mind: and is a plain answer to the objection of his fear, (for 'tis a capricious age we live in, that will make some specious objection or other, though it be not of any great weight.) But how can it be thought a man would come and swear too much, or too far, for fear he should not save himself; or, as they call it, swear himself into a pardon, when he has his pardon? It might be an objection before; but as long as he is under no such terrors now, but stands right, both by the laws of God and man, to be heard as a witness, I think it would be hard for any one to come, and say, "This man would forswear himself." What should provoke him to come and forswear himself, when he is under no danger as to his own particular? There might be an umbrage, I say, of an objection before he had his pardon, though it

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was, indeed, no objection before; not a rational weighty one, to set aside his testimony. But nobody knows which way in the world to satisfy the minds of some sort of people.

In the next place, gentlemen, says Mr. Williams, you are not positive as to the time; you say, it was about the middle of January, and the beginning of February, and that is too general and wide; but you remember particularly to a day the business between you and my Lord of Shaftsbury, that that was the day after Michaelmas day: How can you be so particular as to the one, and not as particular as to the other?

Why, I will undertake that Mr. Williams, when he made the objection, must needs think of the answer that would be given to it. It is notoriously known, that the pressures these gentlemen thought they lay under, were what my Lord of Shaftsbury said, "Now they have got the juries into their own power, and no man is safe; they will find me or any man guilty, as they please;" Why, how came they to get juries into their own hands, but by having the Sheriffs as they would have them? Now the Sheriffs that are to return juries, are, as all men know that know any thing, sworn the day before Michaelmas day; therefore he might very well, and had good reason to remember that day; when such a notorious thing happens to fall out at such a notorious time, 'tis easier for a man to remember that time, than to speak to the particular time of an action, done about the middle of a month, where there is not such a notorious circumstance. Why, I can tell you very well where I was upon the day before Michaelmas day; upon that day, and the day after; for that very reason, because it was a notorious day about the swearing of Sheriffs in London. But if you ask me, where I was the middle of January, or the middle of February, I cannot so well remember that. But there

is credit to be given to a man that speaks to a notorious circumstance, and thereby proves the probability of what he says, though he should not be so particular in a thing that admits not of such a notorious circumstance.

Gentlemen, I make the objections as they are stated on the one side, and on the other side; and the answers that naturally flow to prove the matters before you one way or other; and you are to judge, you are to weigh them; and which has the greater credit with you, you are to take notice of.

He does say, in the next place, here was a discourse of arms and armed men, and a great sum of money spoken of, but there breaks out nothing of this matter till July following; but this debate was in January, and February before. For that matter, the answer that is given, and it seems to be a plain one, is, That they were to conciliate a correspondence with people that were abroad, and that they could not go on till they had effected that; and till these people came to join with them, which could not be without some time. And you hear the Cockrams and the Campbells came not to the town till June or July; so that it was not probable it should break out till then, because it was to be agitated upon their coming here. And so that objection is answered, they did not apprehend any such necessity for present engaging in it. For my Lord Howard, because he thought it would be a work of time to settle the correspondence, and get these people to town, went down to his country-house in Essex, and from thence to the Bath, for he did apprehend some considerable time must be spent, ere these people could come; and therefore he thought it convenient to take his retirement in the mean time.

Ay, but 'tis strange, says Mr. Williams, and he makes that another objection; he would have my Lord Howard to draw in th

this accusation of Mr. Hambden, to procure his pardon, by going further than the other discoverers had gone. It seems, say they, Mr. Hambden was not thought of at first; but because West and Keeling had discovered a plot, my Lord Howard, to secure himself, must go a step further than they, and (as the defendant's counsel would have it) than the truth; and that is the stress of the objection. But the weight of the proof is quite different; for all men know, in the plot there were several parts. There was the business of Keeling and West, and that was the assassination of the King and the Duke; but the Duke of Monmouth, my Lord Howard, and those other gentlemen, were for the business of the rising, though that might be in order to that other purpose; but they kept not company with those that were engaged in that part of the design. They were the underlings, the scoundrel plotters, that were concerned in the assassination. But these gentlemen looked upon themselves to be Privy Counsellors, not to be the executioners; they were to be only advisers, what was to be done after the other business was over; and their consultations were for raising of men for an insurrection; not the business of the assassination of the King, that was not their province. Can it be an objection against my Lord Howard, because he gives a testimony West and Keeling could not give? Could they go further than the killing of the King, which was their business: If any man should have asked my Lord Howard about that matter, he would have made answer, it was not for that purpose that we met together at Mr. Hambden's, and my Lord Russel's; no, that was upon a particular business, and to a particular end and purpose.

Then he says too, that though my Lord Howard comes here upon his oath, and declares these several matters that he hath

deposed; yet he has given a different account of things elsewhere, and he has called several witnesses to that purpose. To whom my Lord Howard several times upon his honour, upon his word, with eyes lifted up, and hands elevated to heaven, and many extraordinary protestations, declared, that he knew nothing of the plot; and say they, if a man will at one time pawn his honour, and his reputation, for the truth of a thing, and after that, will come again to swear against all that matter, that is an argument that does sink the credit and reputation of that witness; and thereupon they call you several witnesses, some whereof are persons of great honour and quality. I think they begin first with Ducas, servant to Colonel Sidney, and he tells you, after his master was taken, my Lord Howard came thither, and desired he might lie there; and desired the use of some plate and goods of Colonel Sidney's; and then asked what was become of his master? And when Ducas told him what he had of the plot, that something was talked of, about the assassination of the King and the Duke, my Lord Howard lifted up his eyes, and his hands to heaven, and declared he knew nothing of it, but he believed Colonel Sidney was a very honest man, and knew nothing at all of any such matter; and as for himself, rather than he would be taken or confined again, he would do any thing. This was the evidence they gave as to him. Then they come with Mr. Howard, their second witness; for I would take them in order as they were produced, and he gives you an account, that he met with my Lord Howard, and my Lord Howard told him, he knew nothing at all of any plot, and did believe that Colonel Sidney was innocent, and he did believe likewise that my Lord Russel was innocent, and for his part he knew nothing of any such thing as a plot, but he says, when he began to talk

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to him, why did he make such a bustle, and go so often into the city, and concern himself about the making of Sheriffs? He answered, I do nothing but what is in a legal way; and he justified all that was done to be only in a legal way.

When once people come to believe, that the raising of tumults, and making seditions, stirs and noises, is a legal way to obtain their ends, as we know 'tis the tenet and principle of a great many people, what will they not do under that pretence, that all they do is according to law? They think it is lawful by the religion they profess, to resist and oppose the government, and the "Old Cause" is a "good Cause" to this day in some men's opinion, and they can die in it, and thank God for being concerned in it. And there are some people that say, the raising of arms by the King's authority against his person is lawful by the religion they profess, and they call them Protestants (how justly you may imagine) and if men will make insurrections to difficult the government, it is rebellion, and no man can justify it, let him pretend conscience or what he will, 'tis rank treason. It is not saying, I am thus persuaded in my conscience, that will excuse the man; if I steer myself by the dictates of a good and regular conscience, it can never be thought that I shall commit treason, but it is the effect of evil principles.

Was it not under the shape of religion, that that blessed martyr King Charles I. of ever blessed memory came to the block? Nay, and I have heard of some men in the late times that were engaged on that side, who finding that the King did prevail at the beginning of the war, because he had gentlemen of quality and spirit to appear for him, were at a loss to know which way in the world they should put a spirit into the common people to oppose the King; and some among them bid them be sure to

put religion to be but the pretence, and that would make them run headlong to what they would have them. Whose opinion that was is not strange to any that know any thing of the history of those times. So that when once people take it to be the principle of their religion to oppose and resist all that are not of their persuasion, and for religion sake to resist authority, then they think all is lawful they can do to preserve their religion as long as they are wound up to that opinion.

Their next witness, gentlemen, is my Lord of Clare, and he gives you an account of his discourse with my Lord Howard. And by the way I must observe, what I am very sorry for with all my heart, to hear, that among gentlemen of quality and honour, discourses of the government, and the male-administration of it as they think, should be only matter of jest fit for their recreation, and laughter; only merry table-talk, as though government, so sacred a thing, were as mean as any trivial concern whatsoever. I am sorry to hear and see, that persons of great honour and quality should esteem it so. And I must be pardoned, if I take notice of it: For matters of government, and yielding obedience to superiors, is a matter of religion, 'tis a serious matter, and every man ought to make conscience of it. To talk of government with reverence, as well as pay duty and obedience to it. And when I find it made a jest, I must be permitted to say that is not so well done, and whoever it is that makes it so, ought very much to be blamed.

My Lord of Clare comes and testifies, that my Lord Howard told him, he did not believe my Lord Russel was guilty of what he was accused of, much less did he believe it of Colonel Sidney, and when he began to talk about writings found in Sidney's closet, he said there can be nothing of his writings

writings found, that can do him or any man else any hurt. This is the substance of what that noble Lord has said.

Then there is my Lord Paget, and he likewise gives an account, that he had some discourse with my Lord Howard about the plot; and he told him too, that he did not believe any thing of this plot, or that my Lord Russell and others accused had any hand in it. But I would observe this one thing upon my Lord Paget's testimony, that still my Lord Howard was wished joy by every body, and I am glad to see your heels at liberty, and the like. So that there was some jealousy of his being concerned; something or other there was in it. Says my Lord Howard, I look upon myself as affronted, that any body should talk so of me. He was concerned that they should suspect him. But something there was at the bottom. Says my Lord Paget, I am glad to hear you are out of it. For he began to imagine there must be some fire for all this smoak. That, gentlemen, was the discourse he had with him. But he says, that with my Lord Paget there were discourses of his going beyond sea, but he did not go.

Then comes Dr. Burnet, and he tells you, that there were protestations made to him, and he has got the same words as the Frenchman had, that he did it with lifted up eyes and hands, he professed solemnly that he was altogether a stranger to any such thing. The Doctor says, he had heard there was a plot, and was persuaded of the truth of it, but he was a little shaken by what my Lord Howard said to him. But now he is sufficiently satisfied there is a plot, and I am glad he is, for I think it scarce does remain a doubt, with any men that have any value for the religion and government we live under. And I know not how they could be better satisfied, than by the evidence that has been given of it, a main part of which was

given by my Lord Howard. All this before my Lord Howard was taken.

Then comes in one Mr. Gilborne, and he tells you the same story, that a great while ago my Lord Howard told him he knew nothing of the plot.

The next to him is Mr. Blake, and he tells you, that after such time as the plot was discovered, and after my Lord Russell was tried, and after my Lord Howard had given evidence at the Old Bailey, he shewed him the warrant for his pardon, and Blake telling him that was not sufficient without an actual pardon; he replied, I think in my conscience I shall not have a pardon till the drudgery of swearing is over. But is that any argument? Here is a man under the drudgery of swearing; therefore he did not know any such thing as he swears. It carries thus much along with it, that it was uneasy to him, and that there is a kind of a force put upon him to swear, as they say, in order to his pardon.

But now, gentlemen, that will admit of this answer, and a plain one certainly it is, when a man comes over and over again to tell the world such a story, and give such an account of himself, it must a little grate upon him, though it be his duty to tell the truth, and though, as Mr. Williams says, he is the best martyr that is a martyr for truth; even so say I on the other side, he is the best penitent that is a penitent for truth, and he is the best witness that is a witness for truth's sake, and he gives the best testimony of his repentance, that by his testimony declares the truth, though it be harsh and uneasy to him; for if I have any ingenuity, and have lived in good credit in the world, it must be a drudgery and irksome thing to call myself a traitor so often in a court of justice. It is true, he might have given it a more moderate term, and yet withall, upon these circumstances, he might have reason.

reason to call it in some sense a drudgery. But now, gentlemen, as he did swear it, before he had his pardon from time to time upon all occasions when he was called as a witness: So now the pardon is come, which they would have to be the reason of the continuance of his drudgery, he swears the same thing. He has his pardon under the King's seal, and though it might be thought they would keep him within the compass of his tether till he had done his evidence; now he has got that he desired, he swears the same thing. And now his pardon does not at all influence his testimony, he is not under any fear, but is as free as any subject the King has, and now he is upon his oath, he gives you the account he has had, and he did say all the same things, before such time as Colonel Sidney and my Lord Russel were tried, that he says now.

Then, gentlemen, you have in the next place witnesses called, several of them to give you an account of the conversation and disposition of Mr. Hambden; for, says Mr. Williams, a man to be guilty of a crime of this nature, there must be some kind of evil disposition to it, and so Mr. Williams would argue and make this inference. You see he is not a man of a turbulent, seditious and factious spirit and temper, he is a studious person, very retired, that has been beyond sea much, and came not home till such a time. And if there were interlocations between my Lord Howard and my Lord Shaftsbury, it was before he came into England, and so he was not concerned in them. He says, that March last he was to go again, he had a mind to return again to France for his health, and what reason have we to imagine he should concern himself in the plot? When he was so studious a man, lived so retired a life, and intended to go abroad so suddenly. And for this you have my Lord Pager, Mr. Pelham, Sir Henry

Hobart, Dr. Lupée, Monsieur Justel, and one Murray.

Williams. Murray, my Lord, we did not examine.

L. C. J. It is true, I beg your pardon. Well then, these others tell you, they have been persons very intimately conversant with him, they never knew he concerned himself with any thing about government, but was of a quiet peaceable demeanor, and was so far from that which the indictment talks of turbulency and sedition, that they never had any discourse with him about any such thing at all, save what Dr. Lupée says, who it seems lived with him about two years, and kept him company in his studies, and that once having a discourse about the Popish Plot, he said he would venture his life, and any thing he had to preserve the King and Government against that plot; he did very well, and if he had since declared, he would have ventured his life to have secured the King and Government against this plot, I should have been glad to find him of that mind, I pray God you may find him to be so. But from the evidence even of that Frenchman, it seems there was some jealousy in the world, and that he lay under hard censures as well as other people. For speaking of the plot, the advice given him was this, My Lord Grey is gone, and the Duke of Monmouth is gone, why will not you go? Why should that advice be given, if there were no suspicion of his being concerned? That he said, "I will not go," and so they would make his staying here to be an instance and proof of his innocence: Why, gentlemen, if that should be so, then there was the same innocency in my Lord Russel, and Colonel Sidney, and all of them: For all the council of six every one of them staid, except the Duke of Monmouth, and he indeed did abscond. And the same evidence that made the Duke of Monmouth fly, and my Lord Essex cut his

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his own throat, convicted my Lord Ruffel and Colonel Sidney, and is now brought against the defendant, and has from time to time been given against the rest. We know no reason they had to stay more than West and Rumley had to stay and be taken, and yet that is not used by them as an argument of their innocency.

These are the evidences that have been given on the defendant's part; and I tell you as I go along what answers are given to it on the part of the King. As to what is spoken of his intention to go again into France, if he designed to go, why did he not go before all this mischief broke out? He came here at Michaelmas, and I may say he came, it may be at an unlucky time, when the city and its neighbourhood was in a distemper, and some men were blown with fears and jealousies. These might animate him, and inspirit him as they did other people, and put them into a ferment; but you find him attending in town, constantly here till the matter was discovered, whatsoever his intentions were, it is much he did not put them into action, it is strange he did not go all this while, it had been much for his advantage that he had never came out of France, or that he had returned thither much sooner.

Against all this that has been urged for the defendant about my Lord Howard, I will tell you what is the answer to it; and truly first I say, I am apt to believe my Lord Howard did tell these gentlemen what they here testify; but was it ever thought, that any man that was guilty of high treason would presently proclaim his own guilt? Is it reasonable to imagine, my Lord Howard would tell Dr. Burnet, I am in a plot, and Colonel Sidney is in a plot, and Mr. Hambden is in a plot, and make it his common talk? Nay, it is so far from being an argument of his innocency, that more naturally it may be turned upon

them as an argument of his guilt. For if a man had not been concerned in the business at all, but were an honest man and free from suspicion, what need I talk or concern myself to proclaim my own innocency not being accused? Why must I tell Colonel Sidney's footman, this man, the other man, that I know nothing of the plot, and neither I nor any other man I sure is concerned in it? But that shews there was a dread and apprehension upon him of something that he was conscious of, and that lying within it must have some vent, and this over-caution is an intimation that there was something more than ordinary in the matter. We take notice of it as a great evidence against a man that is accused for an highway-man, if he comes to such an ale-house or inn, and bids the people take notice I am here at such a time of the day, and that is a circumstance of time that will serve to answer a proof, it may be, that may be brought against him of a robbery done such a time; but we always look upon that industry of theirs, as a piece of artifice designed to patch up a testimony to evade a proof. So that the argument will turn the other way; and it is more for the advantage of these worthy gentlemen, that it should be turned the other way, for otherwise they would be thought to be persons ill affected to the government; that is, Dr. Burnet, my Lord Paget, my Lord Clare, and the rest. And if they have a mind to be thought otherwise, they must let the argument run that way as I say, and in charity we ought to believe the best of all mankind, till we find otherwise by them. We say then in charity, we suppose he thought it not fit to intrust you with his confessions; for you are all loyal men, I know it is the best answer that can be given, and that which they ought to value themselves upon for their own credit and reputation, and not to make it an argument against my Lord

Lord Howard, or against the credibility of his testimony in the matter.

I do not know, truly, gentlemen, that I have omitted any one thing that is material, on the one side or on the other, of which there hath been any proof, but I must only repeat to you this, here is a matter of great concern and consequence, a matter wherein the peace of the government and the kingdom is concerned in a very high degree, a matter, that if there were another witness as positive against the defendant as my Lord Howard, would amount to no less than high treason. But as there is but one witness, backed with these circumstances to corroborate his testimony, it is but only a trespass, but I tell you it treads very nigh upon high treason, and the tendency of it was to bring us all into confusion; and what would be the consequence of that, but to lay us open to the same mischiefs that we were under in the times of the late rebellion? For though men pretend never so fair, and veil it under the names of the "Security of the government and the Protestant religion;" yet they would have done well to have tarried till they had a legal authority to call them to consult of these high matters that they pretend to secure; that had been well. What had these gentlemen to do to take us on themselves this power without authority.

Gentlemen, you have heard the evidence, and you see what it is. And I must say, in the late evidences you have had concerning another business of this nature, I wish that might be said to preserve and support the credit of some persons, upon whose testimonies lives have been taken away, as has been said, and is evident for the advantage of my Lord Howard. I do not find that he has been guilty of perjury, as being concerned in taking oaths one way, and then giving evidence another. I mean, first taking oaths of secrecy and then revealing; not but that notwithstanding all this, they

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may be believed, and God forbid but they should be believed according to truth. But I say, if objections of this nature are to prevail, we must never expect any great crime to be punished, because we must stay till persons that are strangers to the guilt of the fact come to give evidence of it, which is impossible to be done.

Therefore, gentlemen, I must resolve it all into one head; you have the case of a gentleman of quality on the one side, and the peace and preservation of the government on the other side. You hear what is proved against him, the evidence given on his behalf, the objections that have been made by the counsel, which all of them as near as I can remember, I have repeated to you, and I ask your pardon and theirs if I have omitted any thing, and I desire to be minded of it. You hear the answers that have been given. And because the counsel were unwilling to give the court trouble or themselves to make long speeches and observations, therefore I have been necessitated to do it as well as I can.

Upon the whole matter, my Lord Howard has thus positively sworn the matter of fact charged in the indictment against the defendant; he has been supported by the witnesses that confirm the circumstances of Smith's going into Scotland, the Scotchmen's being here in June, and the sham and cant of Carolina. All which you have heard, and I make no question observed, and is not contradicted by any thing I hear that carries any probability of an answer. Therefore, gentlemen, I leave it to you, whether upon this evidence you will take it: upon your consciences and oaths, that my Lord Howard is guilty of wilful and corrupt perjury, then you must find the defendant not guilty; but if you think he has proved the matter fully, and his testimony is supported by those four witnesses, Atterbury, Sir Andrew Foster, Sheriffe, and Pell,

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then,

then, gentlemen, you must find the defendant guilty.

Juryman. My Lord, we desire to ask one question. At the meeting at Mr. Hambden's house, I think my Lord Howard says they went to dinner.

Just. Holloway. No, it was at Colonel Sidney's they went to dinner.

L. C. J. I know not whether you have taken notice of it, but I have, it was at Colonel Sidney's they dined, not at Mr. Hambden's.

Then the jury withdrew from the bar, and within half an hour the jury returned, and being called over answered to their names, and gave in their verdict thus :

Cl. of Cr. Are you all agreed of your verdict ?

Omnes. Yes.

Cl. of Cr. Who shall say for you ?

Omnes. Foreman.

Cl. of Cr. How say you ? Is the defendant guilty of the trespass and misdemeanor whereof he is impeached, or not guilty ?

Foreman. Guilty.

Which verdict being recorded, the court rose

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Lord Chief Justice.

MR. Attorney, have you any thing to move ?

Att. Gen. I pray your judgment against Mr. Hambden, my Lord, who was con-

victed the other day of a great misdemeanor.

L. C. J. Let Mr. Hambden come into the court then. [Which he did.

Att. Gen. My Lord, I need not aggravate the heinousness of the offence ; for it appears both by the information, and upon the evidence to be beyond all aggravation, wherefore I shall only pray your judgment for the King, that you would please to set a good fine upon him, and that he find sureties for his good behaviour during his life.

Williams. May it please your Lordship, I am of counsel for Mr. Hambden.

L. C. J. Are the rules out in this cause ?

Williams. Yes, my Lord, they are out.

L. C. J. Well then, what say you for Mr. Hambden ?

Williams. Mr. Hambden does attend here according to the condition of his recognizance, and since Mr. Attorney hath prayed your judgment, I shall not stir any thing as to the indictment or the verdict, but all I have to say for him is this, Mr. Hambden is but heir apparent, his father is alive, and so tho' he has the prospect of a good estate, yet he has but little at present in possession ; your Lordship knows what *Magna Charta* says, that there should be a *Salvo Contentamento* in all fines, and how far that may be an ingredient into your Lordship's judgment, I leave to your consideration.

L. C. J. For that matter I cannot tell what his estate is, I have no knowledge of him, nor of his estate whether it be great or small, but Mr. Williams knows very well, that the crime, in conscience as well as law in case it had been proved by two witnesses, would not only have wrought a forfeiture of all his estate, but a forfeiture of his life too, and all his reputation, would have bastardized his children, would have attainted and corrupted his blood. So that there is no sort of imagination but that the crime was high enough of conscience, and certainly deserves, if we can impose it ade-

quate.

quate to its desert, a very great punishment. Mr. Hambden nor his counsel can deny but that they had a fair and a full hearing, they had the liberty to say and prove all that they could, and you cannot but say, Mr. Attorney was very fair in making several concessions that he might very lawfully and rightfully have insisted upon, so that there can be no exception of that kind. I am sorry, that Mr. Hambden, a gentleman of good quality as he is by birth, though he be a person I never saw before he came here the last day of the last term upon his *Habeas Corpus*, that I know of. I say, I am sorry one of his quality and education, a studious person, as it seems, by his own natural inclination, and a learned man, should be so unhappily engaged in a design of this horribly evil nature. But on the one side as well as we must take care of the subject, so on the other we must take care of the government. Here was a design of destroying the King, and subverting the government and bringing all into confusion. Of this design the defendant is convicted, and we must take care to proportion the punishment, and according to our consciences and oaths, and as we ought to have regard to the offender, so also we are to have regard to the government that he has offended.

Just. Withins. Mr. Williams, it was amercements that were spoken of there in *Magna Charta*.

L. C. J. Ay, it was never meant of fines for great offences.

Then the Judges consulted together.

Just. Withins. Mr. Hambden, you know you are convicted of a very great offence, as great an offence as can be I think committed, unless it were high treason. For the matter of it would have made you guilty, if there had been two witnesses. It was for conspiring to levy war against his

Majesty, and for conspiring to raise an insurrection and rebellion within the kingdom, a conspiracy of which some other persons being lawfully convicted, they have suffered death for it. You are a person of an extraordinary good family, and I am sorry one of your family that has flourished so long and through so many generations, in great honour and reputation, and great prosperity under the monarchy of England, should come to conspire to deprive that King of his government, whose ancestors have protected and defended your family, and to spoil that monarchy that has been the fountain of so much prosperity and honour to it. I am sorry it comes to my turn to pronounce the sentence of the court upon you, Mr. Hambden. I have not any personal knowledge of you, but I have heard of you, and heard heretofore very well of you. You have had a good education and the report of a learned and ingenious person, which makes me yet wonder the more that you should engage in such a horrid design as this was. Indeed, Mr. Hambden, I am satisfied no fine can be too great, if any can be great enough for such an offence. We cannot take cognizance what your estate is, it is reported there is a great estate in your family, it has been always represented to be so.

Hambden. I have nothing but for life, and that is but little neither.

Just. Withins. I know not what it is truly, Sir, but it was always reported to me to be a very great estate, but whatsoever it is, we are to look after the proportioning the punishment as near as we can to the offence. Mr. Lord, and the court have considered of the matter, and they think fit to give this judgment upon you.

They set the fine of forty thousand pounds upon you, to be paid to the King, and you must be committed till you pay it.

L. C. J.

L. C. J. And that you find sureties for your good behaviour during your life.

All. Gen. I pray he may be committed for his fine.

L. C. J. Let it be so. Mr. Hambden, if you will apply yourself to the King, you may, and there perhaps you may find mercy; we must, according to the duty of our places and oaths, give such judgment as the law requires.

Just. Wimbins. Ay, in God's name. You are in the King's hands, and he may do what he pleases in it.

L. C. J. If a crime of this nature should have a little punishment, it might encourage offenders, and if we were to judge according to some verdicts that have been given here for less offences, where gentlemen have given very much greater damages than this fine amounts to, this would be thought a moderate fine. I am sorry any man should bring himself into these circumstances: The King as he is the fountain

of justice, so he is also of mercy, and you and all the rest of his subjects have cause to bless God that you live under a Monarch that is very merciful. No doubt, if you give a good account of your contrition and sorrow for your great offence, and decently apply yourself to the King, he will think of shewing mercy to you; but justice is our work that are judges; and according to the methods of justice we think we cannot inflict less than we have done.

Williams. My Lord, I pray his bail may be discharged.

L. C. J. Ay, his bail is discharged, he being committed.

Williams. And for the high treason, he is discharged by the *Habeas Corpus* Act.

L. C. J. Yes, he is so, for there is no prosecution.

Then Mr. Hambden was carried by the Marshal away prisoner.

The Trial of the Most Reverend Father in God Dr. William Sancroft, Lord Archbishop of Canterbury; and of the Right Reverend Fathers in God Dr. William Lloyd, Lord Bishop of St. Asaph; Dr. Francis Turner, Lord Bishop of Ely; Dr. John Lake, Lord Bishop of Chichester; Dr. Thomas Kenn, Lord Bishop of Bath and Wells; Dr. Thomas White, Lord Bishop of Peterborough; and Sir Jonathan Trelawney, Bart. Lord Bishop of Bristol, for a (pretended) Libel before the Court of King's-Bench, in Trinity Term, June 15, 1688. 4 Jac. II.

KING James II. published a declaration for Liberty of Conscience, on the 27th of April, 1688. (in which was recited a former declaration): And an order of council was made on the 4th of May following, commanding it to be read in the time of divine service in all churches and chapels in the cities of London and Westminster,

minister, and within ten miles thereof, on the 20th and 27th of May (being Sundays), and in all other churches and chapels in England on the 3d and 10th of June, which were likewise Sundays: And that the Bishops should cause the said declaration to be sent to, and distributed in their respective dioceses, and order the same to be read by their clergy.

The Bishops and clergy about town, assembled hereupon at the Archbishop's palace at Lambeth, to advise what was proper to be done on this occasion: And after some debate, the Archbishop, by the advice of his brethren that were present, wrote to all the Bishops of his province to come to town, or send their opinions of the matter: And it being found that eighteen of the Bishops, and the main body of the clergy concurred in a resolution not to read the declaration, his Grace the Archbishop, with Dr. Lloyd, and the other five Bishops above-mentioned, drew up and signed the following petition.

"To the King's Most Excellent Majesty;

"The humble petition of William Archbishop of Canterbury, and of divers of the Suffragan Bishops of that province (now present with him) in the behalf of themselves, and others of their absent brethren, and of the inferior clergy of their respective dioceses, humbly sheweth,

"That the great averſeness they find in themselves to the distributing and publishing in all their churches your Majesty's late declaration for Liberty of Conscience, proceedeth neither from any want of duty and obedience to your Majesty, our holy mother the Church of England, being both in her principles, and in her constant practice, unquestionably loyal, and having (to her great honour) been more than once publicly acknowledged to be so by your gracious Majesty; nor yet from any want

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of due tenderness to dissenters, in relation to whom they are willing to come to such a temper as shall be thought fit when that matter shall be considered and settled in Parliament and Convocation: But amongst many other considerations, from this especially, because that declaration is founded upon such a dispensing power as hath been often declared illegal in Parliament, and particularly in the years 1662, and 1672, and in the beginning of your Majesty's reign; and is a matter of so great moment and consequence to the whole nation both in church and state, that "your petitioners cannot in prudence, honour, or conscience," so far make themselves parties to it, as the distribution of it all over the nation, and the solemn publication of it once and again, even in God's house, and in the time of his divine service, must amount to, in common and reasonable construction.

"Your petitioners therefore most humbly and earnestly beseech your Majesty, that you will be graciously pleased not to insist upon their distributing and reading your Majesty's said declaration.

"And your petitioners (as in duty bound) shall every pray, &c."

On the 18th of May, two days before the declaration was to be read, the six Bishops (the Archbishop being indisposed) attended his Majesty at Whitehall with their petition; at which he appeared highly incensed, and angrily told them, he had heard of it before, but did not believe it: He did not expect this from the Church of England, especially from some of them: If he changed his mind, they should hear from him: If not, he expected his commands should be obeyed. To which the Bishops replied, they resigned themselves to the will of God, and then withdrew. The King finding his declaration neglected,

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resolved

resolved to prosecute the seven Bishops, whom he looked upon as the occasion of it: And they were accordingly summoned to appear before the council on the 8th of June, when these prelates attending the board, it was demanded of them, if they owned the petition? To which they answered, As they stood there as criminals, they hoped his Majesty would not take advantage against them: But being pressed to own it by the Lord Chancellor Jefferies, the Archbishop at length confessed that it was written with his own hand, and that the rest had signed it; and he hoped they had done nothing but what they could justify: Whereupon the Lord Chancellor demanded, if they would enter into recognizances to appear in the Court of King's Bench, to answer this misdemeanor? The Bishops answered, as they were Peers, they were not obliged to give security on being charged with a misdemeanor in the first instance, and looked upon themselves to be bound in duty to maintain the rights of the Peerage, as well as the rights of the church. And Jefferies threatening to send them to the Tower, unless they withdrew their petition, and obeyed the King's declaration, they answered, "They were ready to go wherever his Majesty pleased: That they hoped the King of Kings would be their Protector and Judge: They had acted according to law and their own consciences; and no punishment should ever shake their resolutions." Whereupon a warrant was drawn up to commit them to the Tower for framing and publishing a seditious libel against his Majesty and his government, as the petition was called. Which warrant was signed by the Lord Chancellor Jefferies, the Earl of Sunderland, President of the Council; the Lord Arundel, the Marquis of Powis, the Earls of Mulgrave, Huntingdon, Peterborough, Craven, Murray, Middleton, Melfort, and Castlemain; the

Lords Dartmouth, Godolphin, and Dover, Sir John Ernle, Sir Edward Herbert, and Sir Nicholas Butler.

And as a tumult was expected on the commitment of the Bishops, they were ordered to be carried to the Tower by water: However, the people came in crowds to the Thames-side, applauding the courage of the Bishops, and wishing them a happy deliverance: And they were no sooner landed at the Tower, but the officers and soldiers of that garrison fell upon their knees, and begged the blessing of those Right Reverend Fathers: Whereupon the King commanded some other companies of soldiers to march into the Tower, in whom he had more confidence.

This short state of the case seemed necessary to be premised, for the better understanding of the following trial.

On the first day of Trinity Term, which fell on Friday the 15th of June this year, the Court of King's-Bench being set, and all the four Judges upon the Bench, viz. The Lord Chief Justice (Sir Robert Wright) Mr. Justice Holloway, Mr. Justice Powell, and Mr. Justice Allynbone.

Mr. Attorney General, Sir Thomas Powis, moved the court for an *Habeas Corpus*, returnable immediate, to bring up my Lords the Bishops; which being granted, Sir Edward Hales, the Lieutenant of the Tower, brought my Lord Archbishop, and the other six Bishops, into court, about eleven o'clock the same day: And the return being read, it appeared that their Lordships were committed to the Tower by virtue of a warrant under the hands and seals of George Lord Jefferies, Baron of Wem, Lord High Chancellor of England; Robert Earl of Sunderland, Lord President of the Council, and the rest of the Privy-council above-mentioned, "For contriving, making and publishing a seditious libel

libel in writing, against his Majesty and the government."

The return being filed, Mr. Attorney moved, that the information he had preferred against his Grace, and the rest of my Lords the Bishops, might be read.

Whereupon Sir Robert Sawyer, of counsel for my Lords the Bishops, moved that they might be discharged before any thing was read, because they were not legally committed. Mr. Solicitor, Sir William Williams, said, in behalf of the King, that this was an *Habeas Corpus* brought by his Majesty, and not by the prisoners; and therefore they must see first what the King had to say to them.

Mr. Serjeant Pemberton, and Mr. Finch, two more of the Bishop's counsel, still insisted that their Lordships ought to be discharged before the information was read, 1. Because the return said they were committed by such and such Lords of the Council, but not "in Council;" and those Lords had no power (out of Council) to commit.

2. Because a Peer cannot be committed for a misdemeanor, but ought to be served with the usual process of a subpoena.

Mr. Pollexfen, another of the Bishop's counsel, also urged, that my Lords the Bishops ought to be discharged before the information was read: But it was ruled by the court, 1. That every commitment should be presumed to be pursuant to the power of the persons committing. And, 2. That the making a seditious libel was a breach of the peace, for which security of the peace might be required of them, notwithstanding their privilege of peerage: And thereupon the information was ordered to be read.

The information set forth, that the King, out of his signal clemency and gracious intention towards his subjects, by his royal prerogative on the 4th day of April, in the 3d year of his reign, did publish his royal

declaration, entitled, "His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience. [Then the declaration itself is inserted, the purport whereof was] That it had always been his Majesty's opinion, that conscience ought not to be constrained, or people forced in matters of meer religion. That it was contrary to the interest of government, by spoiling trade, depopulating countries, and discouraging strangers; and that it never obtained the end: That his Majesty therefore had thought fit to issue forth this declaration of indulgence, making no doubt of the concurrence of the two Houses of Parliament, when they should meet.

And first he declared, That he would protect and maintain the clergy, and other members of the Church of England, in the free exercise of their religion as by law established, and in the full enjoyment of all their possessions; but that the execution of all manner of penal laws for nonconformity in religion, should be immediately suspended: Provided that such nonconformists meet with their doors open, and preach nothing that should tend to the disturbance of the government; and signify their place of meeting to some neighbouring Justice of Peace. And that his Majesty might have the benefit of the service of all his subjects, he further declared, that neither the test, or the oaths of supremacy or allegiance, should be required to be taken or subscribed by any person, on their admission into offices, for the future; and did grant a free pardon to all those who had committed any thing contrary to the said penal laws: And he thought fit further to declare, That he would maintain all his subjects in their properties and possessions, as well of church and abbey-lands, as in any other their lands and property whatsoever, and the information further sets forth, that on the 27th of April, in the 4th year of his Majesty's reign, he published another declaration, (which:

(which is recited in the information) the purport whereof was, That ever since his Majesty had granted the aforesaid indulgence, he had made it his principal care to see it observed without distinction; which his Majesty was encouraged to do, by the multitudes of addresses he daily received from his subjects of all persuasions. That in pursuance of this great work, he had been forced to make many changes both of civil and military officers throughout his dominions; not thinking any ought to be employed in his service, who would not contribute towards the peace and greatness of his country: And he conjured all his subjects to lay aside all private animosities and groundless jealousies, and to chuse such Members of Parliament, as might do their part, to finish what he had begun, being resolved to call a Parliament, which should meet the following November at farthest.

And the information further sets forth, that on the 4th of May, 1688, it was ordered by his Majesty in council, that the said last mentioned declaration, bearing date the 27th of April last, (in which the first is recited) should be read in the usual time of divine service, on the 20th and the 27th of the said month of May, in all churches and chapels within the cities of London and Westminster, and ten miles thereof; and upon the 3d and 10th of June then next, in all other churches and chapels throughout the kingdom; and that the Right Reverend the Bishops should cause the said declaration to be sent and distributed throughout their several dioceses, to be read accordingly: And that the said Archbishop and Bishops, the 18th day of May, in the said 4th year of his Majesty's reign, having conspired and consulted among themselves to diminish the King's power and prerogative, did falsely, unlawfully, maliciously, and scandalously, make, compose, and write, a false, scandalous, malicious, and seditious libel, under pre-

tence of a petition, stiled, "The humble Petition, &c." (which was also recited in the information)

Which said libel, the said Archbishop and Bishops, having respectively subscribed, did, on the said 18th day of May, in the said 4th year of the King, cause to be published in the presence of our said Lord the King, in manifest contempt of his Majesty and of the laws of this kingdom, to the evil example of others, and against the King's peace, &c. Whereupon the said Attorney-General, in behalf of the King, prays advice of the court and process of law, to be made out against the said Archbishop and Bishops, to answer the said Lord the King, concerning the premises, &c. Signed,

Thomas Powis,
William Williams.

(The Attorney and Solicitor-General.)

After reading the information, Mr. Attorney moved that my Lords the Bishops might plead to it immediately; which was opposed by the Bishop's counsel, and time desired to put in their plea till the next Michaelmas term.

But the King's council insisting, that where a man appeared upon a recognizance, or was in custody, or appeared in *propria persona*, as a privileged person, he ought to plead at the first instance: And Sir Samuel Astry, and the rest of the old officers of the court affirming, that this was the constant practice, it was ruled, that my Lords the Bishops should plead immediately, which Mr. Solicitor observed was no hardship; for it was agreed on all hands, that in case of life and death, a man must plead presently; and *a fortiori*, he held it was so in the case of a misdemeanor; for if a person was not be allowed time when he pleaded for his life, there was much less reason he should have time to answer a trespass; (though where one ap-

pears

appears upon a summons indeed, according to the practice of the court, he has an imparlance of course.)

This point being ruled against the Bishops, his Grace the Archbishop stood up, and offering a paper to the court, he said,

“ My Lords,

“ I tender here a short plea, in behalf of myself, and my brethren, the other defendants; and I humbly desire the court will admit of this plea.”

And the Chief Justice saying, it should have been in Parliament; his Grace replied, We will stand by it, my Lord; it is subscribed by our counsel, and we pray it may be admitted by the court.

Then a translation of the plea was read, which was as follows :

“ And the aforesaid William Archbishop of Canterbury, William Bishop of St. Asaph, &c. being present in court in their own persons, pray *Oyer* of the information aforesaid; and it is read to them: Which being read and heard by them the said Archbishop and Bishops say, that they are Peers of this kingdom of England, and Lords of Parliament; and each of them is one of the Peers of this kingdom of England, and a Lord of the Parliament; and that they being (as before is manifest) Peers of this kingdom of England, and Lords of Parliament, ought not to be compelled to answer instantly for the misdemeanor aforesaid, mentioned in the said information exhibited here against them in this court; but they ought to be required to appear by due process in law issuing out of this court here, upon the information aforesaid, and upon their appearance to have a copy of the said information exhibited against them;

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and reasonable time to imparl thereupon, and to advise with counsel learned in the law concerning their defence in that behalf, before they be compelled to answer the said information. Whereupon, for that the said Archbishop and Bishops were imprisoned, and by writ of our Lord the King of *Habeas Corpus*, directed to the Lieutenant of the Tower of London, are now brought here in custody without any process upon the information aforesaid issued against them, and without having any copy of the said information, or any time given them to imparl or be advised: They pray judgment, and the privilege of Peers of this kingdom, in this case to be allowed them; and that they the said Archbishop and Bishops may not be compelled instantly to answer the information aforesaid, &c.

“ Rob. Sawyer,

“ Hen. Finch,

“ Hen. Pollexfen.”

Upon reading this plea, Mr. Attorney said, this was such an unfair way of proceeding as would not be endured in an ordinary case: And he hoped such a plea would not have so much countenance as to be received in court.

Mr. Serjeant Pemberton answered, they put in that plea, and were ready to abide by it: That it was according to the course of the court, and ought to be received: That it was no such great disrespect to the court to put the same matter into a plea, which had been desired upon a motion. But the Chief Justice replied, the Bishops' counsel had not dealt ingeniously with the court after four hours debate, and the opinion of the court delivered, to come and sum up all the arguments in such a plea as this; and so put them upon debating the matter over again: And he thought the court was not bound to receive this plea,

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but might reject it, and oblige the Lords the Bishops to plead over. And Mr. Justice Holloway and Allybone being of the same opinion, (and only Justice Powel for receiving the plea) it was agreed: After which the Bishops severally pleaded, Not Guilty. And the trial was ordered to be at the bar of the Court of King's-Bench that day fortnight. It was also ordered, that forty-eight gentlemen should be returned on the pannel, and a jury struck in the presence of the Attornies and Solicitors on both sides: And the Bishops in the mean time were admitted to bail, his Grace of Canterbury entering into a recognizance of 200l. and the rest of the Bishops in 100l. a-piece, to appear in court that day fortnight, and so from day to day, till they should be discharged. And the King's counsel did not insist on their giving any security but their own recognizances.

The court sitting again on Friday the 29th of June, and the Bishops appearing, the jury were called, consisting of the following gentlemen, viz.

J U R Y.

Sir R. Langley, Bt. Wm. Avery, Esq.
Sir Wm. Hill, Knt. Tho. Austen, Esq.
Rog. Jennings, Esq. Nich. Grice, Esq.
Tho. Harriot, Esq. Michael Arnold, Esq.
J. Nightingale, Esq. Tho. Done, Esq. and
Wm. Withers, Esq. Rich. Shoreditch, Esq.

The jury being sworn, the information was read (which see above). Then Mr. Wright opened the information, and Mr. Attorney-General spoke as follows on the occasion.

Att. Gen. May it please your Lordship, and you Gentlemen of the Jury, you have heard this information read by the Clerk, and it has been likewise opened to you at the bar; but before we go to our evidence,

perhaps it may not be amiss for us, that are of counsel for the King, now in the beginning of this cause, to settle the question right before you, as well to tell you what my Lords the Bishops are not prosecuted for, as what they are. First, I am to tell you, and I believe you cannot yourselves but observe, that my Lords are not prosecuted as Bishops, nor much less are they prosecuted for any point or matter of religion; but they are prosecuted as subjects of this kingdom, and only for a temporal crime, as those that have injured and affronted the King to his very face; for it is said to be done in his own presence. In the next place they are not prosecuted for any non-feasance, or not doing, or omitting to do any thing, but as they are actors for censuring of his Majesty and his government, and for giving their opinion in matters wholly relating to law and government. And I cannot omit here to take notice, that there is not any one thing which the law is more jealous of, or does more carefully provide for the prevention and punishment of, than all accusations and arraignments of the government: No man is allowed to accuse even the most inferior magistrate of any misbehaviour in his office, unless it be in a legal course, though the fact is true; no man may say of a Justice of Peace to his face, that he is unjust in his office; no man may come to a Judge, either by word or petition, and tell him, you have given an unjust, or an ill judgment, and I will not obey it; it is against the rules and law of the kingdom, or the like; no man may say of the great men of the nation, much less of the great officers of the kingdom, that they do act unreasonably, or unjustly, or the like; least of all may any man say any such thing of the King; for these matters tend to possess the people, that the government is ill administered, and the consequence of that is, to set them upon desiring a reformation,

formation, and what that tends to, and will end in, we have all had a sad and too dear-bought experience; the last age will abundantly satisfy us whither such a thing does tend: Men are to take their proper remedies for redress of any grievances they lie under; and the law has provided sufficiently for that. These things are so very well known to all men of the law, and indeed to all the people of England of any understanding, that I need not, nor will not, stand any longer upon it, but come to the matter that is now before you to be tried. The fact that we have laid, we must prove, rather to keep to the formality of a trial, than to pretend to inform you, or tell you what you do not know. It is publicly notorious to the whole world: but because we must go on in the regular methods of law, we shall prove the facts in the order they are laid in the information. First, we take notice, that his Majesty, of his great clemency and goodness to his people, and out of his desire that all his subjects might live easily under him (of which, I think, never Prince gave greater or more plain evidence of his intentions that way) the 4th of April, 1687. He did issue forth his royal declaration for Liberty of Conscience; this matter, without all question, was welcome to all his people that stood in need of it; and those that did not, could not but say the thing, in the nature of it, was very just and gracious; but presently it must be surmised, that the King was not in earnest, and would not, nor could not, make good his promise. But, to take away all surmises, his Majesty was pleased, by his declaration of the 27th of April last, not only to repeat his former declaration, but likewise to renew his former promises to his people, and to assure them, that he still was, and yet is, of the same opinion, that he at first declared himself to be of.

Nay, we further shew you, that to the end that this thing might be known to all his people, even to the meanest men, who it may be, were not willing, or able, to buy the declaration; and that the King himself might be under higher obligations, if it were possible, than his own word, he was desirous it should be repeated in the churches, and read in that sacred place, that all his people might hear what he had promised, and given his own sacred word for; and he himself might be under that solemn tie and obligation to keep his word, by remembering, that his promises had, by his own command, been published in the time of divine service, in the house of God; and thereupon was the order of council made, that has been likewise read to you, which does direct, that it should be read in all the churches and chapels in the kingdom; and you have heard, and we shall prove, what a return his Majesty has had for this grace and kindness of his: You will find, when we come to read that which they call a petition, all their thanks his Majesty had for his favour and goodness to his people, it is only hard words and a heavy accusation, such as a private person would be able to bear; I will not aggravate the matter, but only say thus much, that his Majesty, who was always a Prince of as great clemency as ever this kingdom had, and who was represented, for all that, as a Prince of the greatest cruelty before his accession to the crown by his enemies, is now accused by his friends for this effect of his mercy. My Lord, and Gentlemen of the Jury, his Majesty repented this ill usage so far, that he has ordered and thought fit to have a public vindication of his honour in this matter, by this trial; and we shall go on to our proofs, and we do not doubt, but you will do his Majesty (as you do all other persons) right.

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Then proof was made of printing the two declarations for Liberty of Conscience, by the King's order; and the order of council for reading the last declaration, was proved.

The petition signed by the Bishops also was produced in court; and Sir John Nicholas deposed, that he had it from the King's own hand.

Mr. Attorney. I suppose my Lords the Bishops will not put us to prove it; they will own their hands.

Lord Chief Justice. Yes, Mr. Attorney, their counsel will put you to prove it. I perceive your best way is to ask nothing of them.

Then Sir Thomas Exton was sworn; and deposed, that he believed the body of the petition to be the Archbishop's hand-writing, as also the Archbishop's name, which was subscribed to it.

Mr. Brooks deposed, that he knew the Archbishop's hand; and he believed the name subscribed to the petition, was his hand, as also the petition itself: That he had also seen the Bishop of St. Asaph's hand-writing, and believed the name subscribed to the petition, was his hand: And he had seen a letter from the Bishop of Ely to the Bishop of Oxford, and believed the name subscribed, to be the Bishop of Ely's hand.

Mr. Chetwood deposed, that he had formerly seen a hand, said to be the Bishop of Ely's, and he believed the name signed to the petition was his hand.

Mr. Middleton deposed, he had seen both the Archbishop's, and the Bishop of Ely's hand-writing; and believed the names subscribed to be theirs.

Mr. Clavel deposed, that he knew the Bishop of Peterborough's hand, and believed this to the petition to be his.

Mr. James deposed, that he had seen the Bishop of Bristol write several times, and

he believed the hand to the petition to be his.

Mr. Powel deposed, that the name subscribed to the petition, was like the Bishop of Chichester's hand, he believed.

Mr. Solicitor said, this was not to be endured; there would be an end of all testimony, if witnesses did not answer fairly the questions they were asked.

Mr. Attorney said, they had given evidence sufficient to have the petition read, and desired it might be read.

Serj. Levinz. We pray it may not be read till they prove it better, for they have only given proof by comparison of hands, which in criminal matters ought not to be received; and even that comparison is proved in such an uncertain manner, that it can be no evidence to charge us.

Serj. Pemberton. My Lord, in every petty cause, where it depends upon comparison of hands, they used to bring some of the parties hand-writing, and compare it in court with what is endeavoured to be proved, that the jury may compare them together and judge of the likenesses.

L. C. J. I take it, that the witness himself is judge of the comparison; for if he does know the parties hand, and a paper be offered him to prove it, he is to compare it in his own mind.

Serj. Pemberton. It was never admitted to be so, that I know of.

Solicitor. You may remember several cases, and particularly Sidney's.

Pollexfen. As to Sidney's case, that was in treason; now in treason there is always other evidence brought, and this comes in but to strengthen the other; but in this case, it is the single evidence; there is nothing more for ought appears, but whether another believes this to be their hands: Now, shall any one be condemned for what another believes, without other proof?

Solicitor. They say, proving of similitude of hands is no evidence. When witnesses are

are dead, is it not the common practice to produce witnesses to prove such men are dead, whose names are set as witnesses to deeds; and then swear they believe it to be the hand-writing of those witnesses?

Mr. Finch. The evidence they have given of the Bishops writing this paper, they have laid to be done in Middlesex; and this being local, they must prove it to be written in Middlesex, where they have laid it, or they fail in their proof. If they have given proof of the hand-writing, there is no proof where that hand was written; and therefore they are not yet got so far as to have it read against my Lords.

The Chief Justice and Mr. Justice Allyn were of opinion, that there was proof enough to have the petition read; but Mr. Justice Holloway and Mr. Justice Powel being of another opinion, the Chief Justice directed the King's counsel to go on to some other proof. Whereupon Mr. Solicitor said, they would prove the confessions of the Bishops; which he hoped would be believed by all mankind.

Then Mr. Blathwayte was sworn, and deposed, that on the 18th of this instant, June, my Lord Archbishop acknowledged his hand to the petition (before the council); and the rest of the Bishops, whose hands were subscribed to it, did then also respectively acknowledge, that it was subscribed by them.

Serj. Pemberton. What did my Lords the Bishops say at the time of their appearing in council concerning the King's pleasure, whether they should answer or not?

Mr. Blathwayte. The first time my Lords the Bishops came into the council, they answered, they humbly hoped, as they stood there as criminals, his Majesty would not take advantage against them; however they would obey his Majesty's commands, and thereupon they were commanded to

withdraw. The second time, as near as I can remember, they said the same.

Sir Robert Sawyer. Were they asked, whether they published it?

Blathwayte. I think they were, and they denied it.

Serj. Pemberton. When they came in the second time, did they desire to know, if it were his Majesty's command they should own it?

L. C. J. That I must not permit you to ask, brother.

Attorney. I oppose the asking this question, unless they tell us what use they would make of it.

Serj. Pemberton. We shall make this use of our question; if they answered under a promise from his Majesty, that it should not be given in evidence against them, I hope they shall not take advantage of it.

Solicitor. That is a very unmannerly question; this is to put something upon the King, which I dare hardly name; and if they will be so pressing, I desire for the King, that the question may be so entered.

Serj. Pemberton. Record what you will, I am not afraid of you, Mr. Solicitor.

Attorney. Mr. Blathwayte, answer, whether there was any promise made to my Lords the Bishops from the King?

Blathwayte. There was none made; it was the third time they came in that they owned it. My Lord Chancellor required them to answer, whether they owned that paper or no? and they, having prayed the King that no advantage should be taken against them for what they should say, owned it: And his Grace the Archbishop said, as to publishing it, that it was written with his own hand, and that he had not made use of his Clerk.

Attorney. Did the King make any promise or declaration, that no advantage should be taken, or use made of it?

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Blathwayte.

Blathwayte. The King did not.

Then Mr. Solicitor desired the petition might be read; but the Bishop's counsel answered, that the writing and contriving must be proved to be in Middlesex, for all was local, and the party was to be acquitted, if it was not proved to be done in the county where it was laid.

The Chief Justice said, it was too soon to make these objections, and that the paper ought to be read.

The Bishops' counsel answered, if the objection was saved to them, they should not oppose the reading of it.

Then the petition was read, and the jury viewed it themselves.

Attorney. We shall leave our evidence here, and hear what they can object to it.

L. C. J. What say you for the defendants?

Finch. My Lord, in short, we say, that hitherto they have totally failed, for they have not proved any fact done by us in Middlesex; nor have they proved any publication at all.

L. C. J. You hear that Mr. Blathwayte says, they owned it in Middlesex.

Finch. That is not a publication sure, or any evidence where it was done.

Serj. Levinz. My Lord, in the first place, we insist upon it, there is no proof of the fact being done in the county of Middlesex; and, in the next place, this information and petition do not agree; for they set forth in their information, "That my Lords the Bishops, under pretence of a petition, did make a libel," and have set forth no petition at all; the petitionary part is omitted.

Sir Robert Sawyer. The truth of it is, this information has made a very deformed thing of it; has left neither head or tail: They stile it a petition, but it is without any direction to any body, and without any prayer, for any thing appears: There

may be more in the paper, than in the information: If all were in, one part might explain another.

Solicitor. I wonder to hear that objection from Sir Robert Sawyer, who has exhibited so many informations for libels in pieces taken out of books.

Attorney. Is there any thing more frequent than only to recite the material part, without setting forth the whole book. They tell us we have set forth a petition; we say no such thing: We say in the information, you composed a certain libel, *pretensu petitionis*; in which are contained such and such things.

Solicitor. Take the information as we have laid it, and I believe there are twenty precedents of late days; so was the information against Baxter, so was the information against Johnson, against Dr. Eades, and against Sir Samuel Barnardiston: They are all in this form, *sic continetur*; but they say, we do not set out the petition. We say it is a libel; and it is not the name we rely on, but there is such a libel, so we in our information call it: If it be not a libel, then are they very innocent; but if it be as we say, then it is not the speaking ill things in the body of a petition, and then giving it a good title, and concluding it with a good prayer, will sweeten this crime, nor alter or alleviate it at all: We say a libel is made *pretensu petitionis*, call it what you will; and that these things are a libel upon the King and government.

As to the other objection that is made, that here is no evidence of a publication; my Lord, I take it to be a publication in itself: Is it possible for a man to write a libel, to set his name, and part with it, and it shall come to the King's hands, and this not to be deemed a publication?

Att. Gen. They bid us make out where this libel was written or composed: Put the case, a man is found in Middlesex with a treasonable

a treasonable paper in his pocket, and the man is indicted here in Middlesex, for framing and composing such a treasonable libel, shall he be admitted to say, pray prove where I made and composed it? For tho' you found it in my pocket, yet I might do it in the county of York. This had been a very good defence for Mr. Sidney, who was indicted, convicted, and attainted, for a treasonable paper, found in his study, if this doctrine were true; but then the King would be in a very woful case. Here is a paper that is found in the county of Middlesex, and this is there owned by you to be written and subscribed by you. Pray do you prove that it was written elsewhere.

Serj. *Pemberton*. We will do it, for once, we will prove that my Lord Archbishop was not out of Lambeth-house in two months before the petition was delivered.

Then Mr. Nicholls was sworn.

He deposed, that his Grace of Canterbury did not stir out of Lambeth from Michaelmas last, till the time he was before the council.

Mr. *Finch*. This is *ex abundanti*, for in point of law, it is incumbent upon them to prove where it was done: And as to the 2d part, the publication, there is not a title of proof offered, but only their owning their hands upon their examination at the council; and no man did ever yet think, that the answering a question and owning a paper at the council table, upon a question put by the King himself, was a publication of a libel.

Sol. Gen. If the paper be libellous, wherever it is found, that is a publication. These gentlemen fancy, that unless there was a public delivery of this paper abroad, nothing can be a publication: But I rely upon it, their setting their names to it made it their paper, and wherever it went, that was a publication of it; there is the case of

Williams, made use of by Mr. Finch in Sidney's trial, who wrote a treasonable letter, sealed it up, and sent it to the King: And there is Sir Baptist Hicks's case, and my Lady Hatton's; there was only a letter sealed up and delivered to the party.

Recorder. Suppose a man write a scandalous letter from London, to a judge at Exeter, and sends it by the post, and the letter is received from the post at Exeter, and there opened; would any man make a question, whether the gentleman that sent the letter, may not be indicted and prosecuted for a libel at Exeter, where the libel was received?

Just. Powell. There is no question of that; but that comes not home to our case.

Sol. Gen. The publication we say, was here in Middlesex; and of that there is a clear evidence, because it was found there, and came from the King's hand, to whom it was directed; and it could not come to the King's hand out of their custody, without their consent.

Serjeant *Levinz*. My Lord, the cases that have been cited are all law, but not one title to this purpose. In Sir Baptist Hicks's case, and William's case, it was proved, they all sent them to the places whither they were directed; but is there a title of proof, that the Bishops sent it here? And for Sidney's case, there was treason in the very libel and book that he made; and he was not indicted for publishing, but for treason in the place where it was found, because it was found in his possession; but was this ever found in my Lord Archbishop's possession in Middlesex, or the rest of the Bishops, and were they publishing of it? If it had, then it had been their act clearly; but that is the thing wherein they are defective, that they do not prove that my Lords the Bishops sent or brought it here; but upon the question asked them by the King, they acknowledged it to be their hands:

hands : So that there is no proof of a fact done here, but an acknowledgment of a fact done, nobody knows where.

Pollexfen. It cannot be a crime to answer a question put by authority ; for it is the duty of all men to answer, when examined by a lawful authority. If a man comes before a magistrate, and confesses any thing, that indeed is evidence, but is not a crime ; for there is a great deal of difference between evidence and the crime ; but that this should be both an evidence and a crime too, is a very strange construction ; and for the other part, the writing (I suppose) the court is satisfied it was in another county.

Sir George Treby. The evidence they have offered to prove the publishing it, is a confession ; this confession is testified by Mr. Blathwayte, who says, the Bishops were asked at the council, whether they did subscribe and publish this paper ? and that their answer was, that they did subscribe, but not publish it. Now a confession must be taken together, and must be admitted to be entirely true by them that produce it ; they shall never be allowed to take out and use one piece, and wave the rest ; so that the King's counsel have plainly proved that the Bishops did not publish this paper ; and yet this is the only evidence upon which they would infer that they did publish it.

L. C. J. It lies upon the King's counsel to prove that my Lords the Bishops did cause it to be published ; for their owning their hands does not amount to a publication.

Then the clerks of the council were called in again ; namely, Mr. Blathwayte, Mr. Bridgman, Sir John Nicholas, and Mr. Pepys ; and it was demanded of them, whether the question put to the Bishops at the council board was, " Whether this was the paper they delivered to the King ? (or)

Whether those were their hands that were to it ?

They all answered, that they owned their hands ; but they could none of them remember, that the Bishops said, that was the paper they delivered to the King : At which there was a great shout. Mr. Solicitor said, " Here's wonderful great rejoicing that truth cannot prevail."

The Chief Justice beginning to direct the jury, Mr. Finch interrupted his Lordship, and demanded, whether this was evidence or not ? For if it was admitted to be evidence, they had other matter to offer in answer to that evidence, and in their own defence.

The Chief Justice answered, if they had more to offer, why did they conclude, and let him begin to direct the jury ? But since they said, they had other matter to offer, the court would hear it.

" Here Serjeant Levinz, perceiving that the King's counsel had sent away for other evidence, desired his Lordship would go on with his directions."

But Mr. Solicitor said, he was glad the Bishop's counsel had given this interruption ; because they should now be able to clear this point. There was a fatality, he observed, in some causes, and particularly in this, they must beg the patience of the court a little while ; for they had notice a person of very great quality was coming, that would make it appear, the Bishops made their addresses to him, that they might deliver the petition to the King.

There being a considerable pause, which the Bishops counsel was uneasy at, oath was made, that Mr. Graham went for my Lord Sunderland, and he was coming.

The Lord Sunderland appearing some time afterwards, was sworn, and deposed, that before the Bishops appeared in council, the Bishop of St. Asaph and Chichester came to his office (the Secretary's,) and told him, they came in the name of the Archbishop,

Archbishop, and four more of their brethren, viz. the Bishops of Ely, Bath and Wells, Bristol and Peterborough, with a petition to deliver the King, if he would give them leave; and desired to know of him, which was the best way to do it; and he answered, he would know the King's pleasure, and bring them word. That they offered him their petition to read; but he would not read it, and went immediately to his Majesty, and acquainted him with it: That the King commanded him to let them know, they might come when they would; which he acquainted them with, and they went for their brethren, and attended his Majesty with their petition in about an hour's time; but he was not in the room when it was delivered to the King.

L. C. J. Truly there was a great presumption before, but there is a greater now, and I think I shall leave it with some effect to the jury. I cannot see but here is enough to put the proof upon you; I think this is sufficient evidence of the publication.

Pollexfen. The Archbishop was not there; and so there is no evidence against him: And for the other six Lords, my Lord President (Sunderland) does not say, that this is the petition that they said they had to deliver to the King; nor did he see them deliver it.

Attorney. Then we leave it fairly to the jury on this fact.

Pollexfen. If so, then we desire to be heard in our defence.

Rob. Sawyer. May it please your Lordship, and you gentlemen of the jury, you have heard this charge which Mr. Attorney has been pleased to make against my Lords the Bishops, and that is this: That they conspire to diminish the royal authority, and regal prerogative, power, and government of the King, and to avoid the order of council; and in prosecution of this, they did falsely, maliciously, and seditiously, make a libel against the King, un-

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der pretence of a petition, and did publish the same in the King's presence.

This, gentlemen, is a very heinous and heavy charge; but you see how short their evidence is: The evidence they bring forth is only, that my Lords the Bishops presented the paper to the King in the most private and humble manner they could; that which they have been so many hours in proving, and which they cry up to be as strong an evidence as ever was given, proves it to be the farthest from sedition in the doing of it, that can be; and you see what it is, it is a petition to be relieved against an order of council, which they conceive they were aggrieved by; they indeed do not deal fairly with the court, nor with us, in that they do not set it forth that it was a petition.

L. C. J. That was overruled before.

Sir Rob. Sawyer. I do not insist upon it now, so much as an exception to the information, as I do to the evidence: they set this forth to be a scandalous matter; but it only contains their reasons, whereby they would satisfy his Majesty, why they cannot comply in a concurrence with his Majesty's pleasure; and therefore they humbly beseech the King, and beg and request him (as the words of it are) that his Majesty would be pleased not to insist upon their distributing and reading of this declaration; so the petitioners for themselves, and the whole clergy of England, beg of the King that he would please not to insist upon it.

Gentlemen, you may observe it, that there is nothing in this petition that contains any thing of sedition in it, and it would be strange this petition should be *Felo de se*, and by one part of it destroy the other. It was laid indeed in the information, that it was with intent and purpose to diminish the King's royal authority; but I appear to your Lordship, the court, and the jury, whether there be any one word in it that any way touches the King's prerogative

gative, or any title of evidence that has been given to make good the charge; it is an excuse barely for their non-compliance with the King's order, and a begging of the King, with all humility and submission, that he would be pleased not to insist upon the reading of his Majesty's declaration upon these grounds, because the dispensing power, upon which it was founded, had been several times in Parliament declared to be against law; and because it was a case of that consequence, that "they could not in prudence, honour, or conscience, concur in it."

My Lord, Mr. Attorney has been pleased to charge in this information, that this is a false, malicious, and seditious libel; both the falsity of it, and that it was malicious and seditious, are all matters of fact, which, with submission, they have offered to the jury no proof of: And I make no question but easily to demonstrate the quite contrary.

For, my Lord, I think it can be no question, but that any subject that is commanded by the King to do a thing which he conceives to be against law, and against his conscience, may humbly apply himself to the King, and tell him the reason why he does not that thing he is commanded to do, why he cannot concur with his Majesty in such a command.

My Lord, that which Mr. Attorney did insist upon in the beginning of this day (and he pretended to cite some cases for it) was, that in this case, my Lords the Bishops were not sued as Bishops, nor prosecuted for their religion. Truly, my Lord, I do not know what they are sued for else; the information is against them as Bishops; it is for an act they did as Bishops, and no otherwise; and for an act they did, and do conceive they lawfully might do, with relation to their ecclesiastical polity, and the government of their people as Bishops.

The next thing Mr. Attorney offered

was, that it was not for a non-feasance, but for afeasance. It is true, my Lord, it is for afeasance, in making of the petition, but it was to excuse a non-feasance, the not reading according to the order; and this, sure, was lawful for all the Bishops, as subjects, to do; and I shall shew it was certainly the duty of my Lords the Bishops, or any Peer of this realm, to do the same in a like case. It was likewise said, they were prosecuted here for affronting the government, and intermeddling with matters of state; but I beg your Lordship and the jury to consider, whether there is one tittle of this mentioned in the petition, or any evidence given of it: The petition does not meddle with any thing of any matter of state, but refers to an ecclesiastical matter, to be executed by the clergy, and to a matter that has relation to ecclesiastical causes: So that they were not busy-bodies, or such as meddled in matters that did not relate to them, but that which was properly within their sphere and jurisdiction.

But after all, there is no evidence, nor any sort of evidence that is given by Mr. Attorney, that will maintain the least tittle of this charge; and how he comes to leave it upon this sort of evidence, I cannot tell: All that it amounts to is, that my Lords the Bishops being-grieved in this manner, made this petition to the King in the most private and respectful manner; and for him to load it with such horrid black epithets that it was done libellously, maliciously, and scandalously, and to oppose the King and government, it is very hard; it is a case of a very extraordinary nature; and I believe my Lords the Bishops cannot but conceive a great deal of trouble, that they should lie under so heavy a charge, and that Mr. Attorney should draw so severe an information against them, when he has so little proof to make it out.

My Lord, by what we have to say to it, we hope we shall give your Lordship and
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the jury satisfaction, that we have done but our duties, supposing here has been a sufficient evidence of the fact given, which we leave to your Lordship and the jury.

My Lord, we say in short, that this petition is no more than what any man, if he be commanded to do any thing, might humbly do, and not be guilty of any crime. And my Lord, as to the matter of our defence, it will consist of these heads:

First, We shall consider the matter of this petition.

Secondly, The manner of the delivering it, according as they have given evidence here.

And, *Thirdly*, the persons that have delivered this petition. And we hope to make it appear beyond all question, that the matter contained in this petition is neither false, nor contrary to law, but agreeable to all the laws of the land in all times. We shall likewise shew you, (though that appear sufficiently to you already) that the manner of delivering it was so far from being seditious, that it was in the most secret and private manner, and with the greatest humility and duty imaginable: And then, as to the persons, we shall shew you that they are not such as Mr. Attorney says, who meddle with matters of state that are out of their sphere, but they are persons concerned, and concerned in interest in the case, to make this humble application to the King. And when we have proved all this matter, you will see how strangely we are blackened with titles and epithets which we no ways deserve, and of which, God be thanked, there is no proof.

For, my Lord, for the matter of the petition we shall consider two things.

The first is, the prayer, which is this: They humbly beg and desire of the King, on behalf of themselves and the rest of the clergy, that he would not insist upon the reading and publishing of this declaration.

Surely, my Lord, there is nothing of falsity in this, nor any thing that is contrary to law, or unlawful for any man that is pressed to any thing, especially by an order of council; and this is nothing but a petition against an order of council; and if there be an order that commands my Lords the Bishops to do any thing that seems grievous to them, surely they may beg of the King that he would not insist upon it.

And for this matter, they were so well satisfied about it, and so far from thinking that it was any part of a libel, that they left it out in the information; and so have made a deformed and absurd story of it, without head or tail, a petition directed to no body, and for nothing, it being without title or prayer, so that this is plain, it was lawful to petition.

Then, my Lord, the next thing is, the reasons which my Lords the Bishops come to acquaint the King with, why in honour and conscience they cannot comply with, and give obedience to this order: And the reasons, my Lord, are two.

The first reason that is assigned, is, the several declarations that have been in Parliament (several of which are mentioned,) that such a power to dispense with the law, is against law; and that it could not be done but by an Act of Parliament; for that is the meaning of the word *illegal*, that has no other meaning but unlawful; the same word in point of signification with the word *illicite*, which they have used in their information, a thing that cannot be done by law; and this they are pleased to tell the King, not as declaring their own judgments, but what has been declared in Parliament; though if they had done the former, they being Peers of the realm, and Bishops of the church, are bound to understand the laws, especially when (as I shall come to shew you); they are made guardians of these laws; and if any thing go amiss,
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and contrary to these laws, they ought to inform the King of it.

My Lord, the next thing is, because it is a thing of so great moment, and the consequences that will arise from their publishing of this declaration; and that too, my Lord, (for the latter I shall begin first with) there can be no question about, or any pretence that this is libellous or false; for certainly it is a case of the greatest consequence to the whole nation that ever was, therefore it cannot be false or libellous to say so.

My Lord, I would not mention this, for I am loth to touch upon things of this nature, had not the information itself made it the gist of the charge; for the information (if there be any thing in it) says, that it was to diminish the King's prerogative and regal power in publishing that declaration.

Now, my Lord, what the consequence of this would be, and what my Lords the Bishops meant by saying, it was a cause of great moment, will appear, by considering that which is the main clause in the declaration, at which my Lords the Bishops scrupled, which is the main stumbling-block to my Lords, and has been to many honest men besides, and that is this:

"We do likewise declare, it is our royal will and pleasure, that from henceforth the execution of all and all manner of penal laws in matters ecclesiastical, for not coming to church, or not receiving the sacrament, or for any other non-conformity to the religion established; or for or by reason of the exercise of religion in any manner whatsoever, be immediately suspended, and the further execution of the said penal laws, and every of them, is hereby suspended."

Now, my Lord, this clause is of some legal effect and signification, or it is not. If Mr. Attorney, or the King's counsel, do say it is of no effect in law, then there is no

harm done; then this petition does no way impeach the King's prerogative, in saying it has been declared in Parliament, according as the King's counsel do agree the law to be.

But, my Lord, if it have any effect in law, and these laws are suspended by virtue of this clause in the declaration, then certainly it is of the most dismal consequence that can be thought of; and it behoved my Lords, who are the fathers of the church, humbly to represent it to the King.

For, my Lord, by this declaration, and particularly by that clause in it, not only the laws of our reformation, but all the laws for the preservation of the Christian religion in general are suspended, and become of no force: If there be such an effect in law wrought by this declaration as is pretended, (that is) that the obligation of obedience to them ceaseth; the reason of it is plain, the words cannot admit of such a quibble as to pretend that the execution of the law is not the suspending of the law; and that the suspending the execution of the law is not a suspending of the law; for we all know the execution of every law, in its primary intent, is obedience to it; that of the penalty comes in by way of punishment and recompence for their disobedience.

Now, my Lord, if this declaration does discharge the King's subjects from their obedience to, and the obligation from, those laws; then pray, my Lord, where are we? Then all the laws of the reformation are suspended, and the laws of Christianity itself, by those latter words [or for or by reason of religion, in any manner whatsoever,] so that is not confined to the Christian religion, but all other religions are permitted under this clause; and thus all our laws for keeping the Sabbath, and which distinguish us from Heathens, will be suspended too.

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My Lord, this is such an inconvenience as (I think) I need name no more; and it is a very natural consequence from that clause of the declaration; it discharges at once all ministers and clergymen from performing their duty in reading the service of the church; it discharges their hearers from attending upon that service.

When a law is suspended, the obligation thereof is taken away; and those that before thought themselves bound to obey, now conclude they are not so obliged; and what a mischief that will be to the church, which is under the care of my Lords the Bishops, your Lordship will easily apprehend.

These things, my Lord, I only mention, to shew the great and evil consequences that apparently follow upon such a declaration; which made my Lords the Bishops decline obeying the order, and put them under a necessity of applying thus to the King, to acquaint him with the reasons why they could not comply with his commands, to read this declaration to the people, because the consequences of it were so great, it tending naturally to lead the people into so great an error, as to believe those laws were not in force, when in truth and reality they are still in force, and continue to oblige them.

And that being the second reason in this petition, I come next to consider it, to wit, that the Parliament had often declared this pretended power to be illegal; and for that, we shall read the several records in Parliament, mentioned in their petition, and produce several ancient records of former Parliaments that prove this point, and particularly in the time of Richard II. concerning the statute of provisors, where there were particular dispensations for that statute; the King was enabled to do it by Act of Parliament, and could not do it without.

L. C. J. Pray, Sir Robert Sawyer, go to Vol. I. No. 31.

your proofs, and reserve your arguments till afterwards.

Sir Rob. Sawyer. My Lord, I do but shortly mention these things; so that, as to the matter of this petition, we shall shew you, that it is true, and agreeable to the laws of the land.

Then, my Lord, as to the manner of delivering it, I need say no more, but that it is plain from their evidence, that it was in the most private and humble manner; and as my Lord President said, leave was asked of the King for them to be admitted to present it; leave was given, and accordingly they did it.

We come then, my Lord, to the third thing, the persons, these noble Lords; and we shall shew they are not busy-bodies, but in this matter have done their duty, and meddled with their own affairs; that will appear,

First, by the general care that is reposed in them by the law of the land: They are frequently, in our books, called "The King's Spiritual Judges;" they are intrusted with the care of souls, and the superintendency over all the clergy is their principal care.

But besides this, my Lord, there is another special care put upon them, by the express words of an act of Parliament; for, over and above the general care of the church, by virtue of their offices as Bishops, the Act of 1 Eliz. cap. 2. makes them special guardians of the law of uniformity, and of that other law in his late Majesty's reign, where all the clauses of the statute of 1 Eliz. are revived, and made applicable to the present state of the church of England. Now in that statute of 1 Eliz. there is this clause:

"And for the due execution hereof, the Queen's Most Excellent Majesty, the Lords Spiritual and Temporal, and all the Commons in this present Parliament assembled,

sembled, do, in God's name, earnestly require and charge all the Archbishops and Bishops, and other Ordinaries, that they do endeavour themselves, to the utmost of their knowledges, that the due and true execution hereof may be had throughout their dioceses and charges, as they will answer before God for such evils and plagues wherewith Almighty God may justly punish his people, for neglecting this good and whole ~~some law~~."

This is the charge that lies upon the Bishops, to take care of the execution of that law; and I shall pray, by and by, that it may be read to the jury.

Sol. Gen. That is very well indeed! To what purpose?

Rob. Sawyer. So that, my Lord, by this law it is plain, that my Lords the Bishops, upon pain of bringing upon themselves the imprecation of this Act of Parliament, are obliged to see it executed; and then, my Lord, when any thing comes under their knowledge, especially if they are to be actors in it, that has such a tendency to destroy the very foundations of the church, as the suspension of all the laws that relate to the church must do, it concerns them, that have no other remedy, to address the King, by petition, about it.

For that, Mr. Attorney, my Lord, has agreed, that if a proper remedy be pursued in a proper court, for a grievance complained of, though there may be many hard words that else would be scandalous, yet, being in a regular course, they are no scandal; and so it is said in Lake's case, in my Lord Hobart,

My Lord, we must appeal to the King, or we can appeal to nobody, to be relieved against an order of council, with which we are aggrieved; and it is our duty so to do, according to the care that the law hath placed in us.

Besides, my Lord, the Bishops were commanded by this order, to do an act relating to their ecclesiastical function; to distribute it to be read to their clergy; and how could they in conscience do it, when they thought part of the declaration was not according to law?

Pray, my Lord, what has been the reason of his Majesty's consulting of his judges? And if his Majesty, or any the great officers, by his command, are about to do any thing that is contrary to law, was it ever yet an offence to tell the King so? I always looked upon it as the duty of an officer or magistrate, to tell the King what is law, and what is not law.

In Cavendish's case, in the Queen's time, there was an office granted of the return of the writs of superseatas, in the Court of Common-pleas; and he comes to the court, and desires to be put into the possession of the office; they court told him, they could do nothing in it, but he must bring his assize: He applies to the Queen, and she sends, under the Privy Seal, a command to sequester the profits, and to take security to answer the profits as the judgment of the law should go; but the judges there return an answer, that it was against law, and they could not do it; then there comes a second letter reciting the former, and commanding their obedience; the judges returned for answer, they were upon their oaths, and were sworn to keep the laws, and would not do it.

My Lord, the like was done in the time of my Lord Hobart; we have it reported in Anderson, in a case where a prohibition had gone; there came a message from court, that a consultation should be granted, and that was a matter wherein there were various opinions, whether it was *ex necessitate*, or discretionary; but there they returned, that it was against law for any such message to be sent.

Now,

Now here, my Lord, is a case full as strong, my Lords the Bishops were commanded to do an act, which they conceived to be against law, and they declined it, and tell the King the reason; and they have done it in the most humble manner that could be, by way of petition. If they had done (as the civil law terms it) *rescribere* generally, that had been lawful, but here they have done it in a more respectful manner, by an humble petition; if they had said the law was otherwise, that sure had been no fault; but they do not so much as that, but they only say, it was so declared in Parliament; and they declare it with all humility and dutifulness. So that, my Lord, if we consider the persons of the defendants, they have not acted as busybodies; and therefore, as this case is, when we have given our evidence, here will be an answer to all the implications of law that are contained in this information: For they would have this petition work by implication of law, to make a libel of it: but, by what I have said, it will appear, there was nothing of sedition, nothing of malice, nothing of scandal in it; nothing of the salt, and vinegar, and pepper, that they have put into the case. We shall prove the matters that I have opened for our defence, and then, I dare say, your Lordship and the jury will be of opinion, we have done nothing but our duty.

Mr. Finch seconded Sir Robert Sawyer, and insisted, that the power of abrogating laws was as much a part of the Legislature, as the power of making laws; that a power to lay the laws asleep and suspend laws, was equal to the power of abrogating them; for they were no longer in being as laws, while they are so laid asleep or suspended: Then if this declaration was founded upon a part of the Legislature, which must by all men be acknowledged not to reside in the King alone, but in the King, Lords and

Commons, it could not be a legal and true power and prerogative.

Mr. Serjeant Pemberton and Mr. Pollexfen, two more of the Bishops counsel, also maintained, that the Kings of England had no power to suspend or dispense with the laws; and that it was no crime to petition the King, or inform him if he was mistaken in law; that it was allowed daily in Westminster-hall to argue against the King's grants, and say he was deceived in his grants; that the laws of uniformity were made upon a foresight of the mischiefs that might come by false religions in this kingdom, and particularly to keep out the Romish religion (which was the very worst of all religions) from prevailing amongst us; that this was the very design of the Act for establishing the test, entitled, "An Act to prevent dangers that may happen from Popish-recusants;" and if the King might suspend the laws of England which concerned religion, they knew no other laws but he might suspend; and then how precarious the lives, liberties, and properties of the subjects would be, ought to be considered.

Then the Bishops counsel produced some records, statutes, and declarations of Parliament, to support the doctrines they had advanced.

And first the record empowering King Richard II. to dispense with the statute of provisors, was read.

By this record it appears, that a power was given by the Commons to the King, that he, with the assent of the Lords, might dispense with the statute of provisors till the next Parliament, reserving a power to the Commons to disagree to, and retract that consent of theirs, in the next Parliament, if they thought fit: And they protest that this assent, which was a novelty, and had not been done before that time, should not be drawn into example or consequence for the time to come; and pray,

pray the King, that their protestation may be entered on record in the roll of Parliament; and the King commanded it to be done, as they desired.

Sir George Treby observed hereupon, that the statute of provisors, thus dispensed with, was a penal law, and concerned ecclesiastical affairs, viz. The collating and presenting to Bishoprics, benefices, &c.

Then the Journal of the House of Lords being produced, his late Majesty's Speech of the 18th of February, 1662, was read; wherein was a clause, from whence the defendants argued, that the King himself did not apprehend he had a dispensing power, (viz.) "And yet, if the Dissenters will demean themselves peaceably and modestly under the government, I could heartily wish I had such a power of indulgence, to use upon occasion."

Then the Bishops' counsel proceeded to shew, that the Lords, in compliance with the King's desire, ordered a bill to be brought in, to enable his Majesty to dispense with the Act of Uniformity, or with any other laws requiring oaths, or subscriptions, or conformity to the discipline of the established church.

Then part of an address of the Commons, in answer to the King's Speech, was read; wherein they tell his Majesty, "That it was not advisable to grant any indulgence to those persons, who presumed to dissent from the Act of Uniformity and the religion established: And that the Act of Uniformity could not be dispensed with, but by Act of Parliament."

And part of the King's Speech on the 5th of February, 1672, was read; wherein he says, "He had put forth a Declaration for indulgence to Dissenters."

An address of the Commons, of the 4th of February, in answer to it, was also read; wherein they say, "That they found themselves bound in duty to inform his Majesty,

that penal statutes, in matters ecclesiastical, cannot be suspended but by an Act of Parliament;" and therefore beseech his Majesty that the said laws may have their free course, until it shall be otherwise provided for by Act of Parliament.

The King's message in answer to that address, was also read; (viz.) That his Majesty did not pretend to the right of suspending any laws, wherein the properties, rights, or liberties of any of his subjects, were concerned; nor to alter any thing in the established doctrine or discipline of the Church of England: But his only design in this was, to take off the penalties the statutes inflicted on Dissenters.

Then the Commons answer of the 26th of February, 1672, in answer to the said message, was read; wherein they tell his Majesty, that the abovesaid answer to their petition and address, is not sufficient to clear the apprehensions that may justly remain in the minds of his people, by his Majesty's having claimed a power to suspend penal laws, in matters ecclesiastical, and which his Majesty did still seem to assert in the said answer to be entrusted in the crown, and never questioned in the reigns of any of his ancestors: "Wherein they humbly conceived his Majesty had been misinformed;" since no such power was ever claimed or exercised by any of his Majesty's predecessors; and if it should be admitted, might tend to the interrupting the free course of the laws, and altering the legislative power, which had been always acknowledged to reside in the King and the two Houses of Parliament: They therefore, with an unanimous consent, became again most humble suitors unto his sacred Majesty, that he would be pleased to give them a full and satisfactory answer to their said petition and address; and that his Majesty would take such effectual order, that the proceedings in this matter, might
not

not for the future be drawn into consequence.

His Majesty's Speech of the 8th of March, 1672, also was read; wherein he says, if there were any scruple remaining with them concerning the suspension of penal laws, he then faithfully promised them, that what had been done in that particular, should not for the future be drawn either into consequence or example; and that, as he daily expected from them a bill for his supply, so he assured them he should as willingly pass any other bill they should offer him, that might tend to the giving them satisfaction in all their just grievances.

Another message from his Majesty to the House, the next day, by the Lord Chancellor, was also read; wherein he says, "That he had the last night, in pursuance of what he then intended and declared in the morning, concerning the suspension of penal laws not being for the future drawn either into consequence or example, caused the original declaration under the great seal, to be cancelled in his presence: Whereof the said Lord Chancellor and several other Lords of the council were witnesses."

Then his Majesty King James II's Speech to both Houses, Nov. 9, 1685, after the suppressing Monmouth's rebellion, was read; wherein he says, "Let no man take exceptions that there are some officers in the army not qualified according to the late tests."

And afterwards the Commons address thereupon, Nov. 16, 1685, wherein they say, that as to part of his Majesty's Speech, relating to the officers of the army not qualified for their employments, "They did, out of their bounden duty, humbly represent unto his Majesty, that those officers could not by law be capable of their employments; and that the incapacities they bring upon themselves thereby, can no

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ways be taken off, but by Act of Parliament."

That they were ready to pass a bill to indemnify them from the penalties they had incurred; but did beseech his Majesty to give such directions therein for the future, that no apprehensions or jealousies might remain in the hearts of his Majesty's subjects.

Then a paragraph out of the statute of 1 Eliz. chap. 2. was read, whereby the Bishops are charged to see the laws in relation to uniformity executed, as they will answer it before God; for such evils and plagues wherewith Almighty God may justly punish his people for neglecting that good and wholesome law.

After which the Bishop's counsel proceeded to make their observations on the whole; and first Mr. Serjeant Levinz.

Serjeant Levinz. Now, my Lord, if your Lordship pleases, the charge is a charge for a libel; and there are two things to be considered.

First, Whether the Bishops did deliver this paper to the King? But that we leave upon the evidence that has been given; only we say, there has been no direct proof of that.

In the next place, supposing they did deliver this petition to the King, whether this be a libel, upon the matter of it, the manner of delivering it, or the persons that did it?

And with submission, my Lord, this cannot be a libel, although it be true that they did so deliver it.

First, my Lord, there is a little dissimilarity offered to my Lords the Bishops in only setting forth part, and not the whole; in only reciting the body, and not the prayer.

But, my Lord, with your Lordship's favour, taking the petitionary part, and adding it to the other, it quite alters the nature of the thing; for it may be, a com-

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plaint without seeking redress might be an ill matter; but here taking the whole together, it appears to be a complaint of a grievance, and a desire to be eased of it.

With your Lordship's favour, the subjects have a right to petition the King in all their grievances; so say all our books of law; and so says the statute of the 13th of the late King: They may petition, and come and deliver their petition under the number of ten, as heretofore they might have done (says the statute): So that they at all times have had a right so to do; and indeed if they had not, it were the most lamentable thing in the world, that men must have grievances upon them, and yet they not to be admitted to seek relief in an humble way.

Now, my Lord, this is a petition setting forth a grievance, and praying his Majesty to give relief. And what is this grievance? It is that command of his, by that order made upon my Lords the Bishops, to distribute the Declaration, and cause it to be read in the churches. And pray, my Lord, let us consider what the effects and consequences of this distribution and reading is: It is to tell the people, that they need not submit to the Act of Uniformity, nor to any Act of Parliament made about ecclesiastical matters, for they are suspended and dispensed with. This my Lords the Bishops must do, if they obey this order: But your Lordship sees, if they do it, they lie under an *Anathema* by the statute of 1 Eliz. for there they are under a curse, if they do not look to the preservation and observation of that Act: But this command to distribute and read the Declaration, whereby all these laws are dispensed with, is to let the people know, they will not do what the act requires of them.

Now, with your Lordship's favour, my Lords the Bishops lying under this pressure, the weight of which was very grievous upon them, they, by petition, apply to the

King to be eased of it, which they might do as subjects: Besides, my Lord, they are Peers of the realm, and were most of them sitting as such in the last Parliament; where (as you have heard) it was declared, such a dispensation could not be; and then in what a case should they have been if they should have distributed this Declaration, which was so contrary to their own actings in Parliament? What could they have answered for themselves, had they thus contributed to this Declaration, when they had themselves before declared that the King could not dispense?

And that this was no new thing, for it had been so declared in a Parliament before in two sessions of it, in the late King's reign, within a very little time one of another; and such a Parliament that were so liberal in their aids to the crown, that a man would not think they should go about to deprive the crown of any of its rights: It was a Parliament that did as great services for the crown as ever any did; and therefore there is no reason to suspect that, if the King had had such a power, they would have appeared so earnest against it.

But, my Lord, if your Lordship pleases, these are not the beginnings of this matter; for we have shewed you, from the 15th of Richard the 2d. that there was a power granted by the Parliament to the King, to dispense with a particular Act of Parliament; which argues, that it could not be without an Act of Parliament: And in 1662 it is said expressly, that they can not be dispensed but by an Act of Parliament. 'Tis said so again in 1672, the King was then pleased to assume to himself such a power as is pretended to in this declaration: Yet, upon information from his Houses of Parliament, the King declared himself satisfied that he had no such power, cancelled his Declaration, and promised that it should not be drawn into consequence

quence or example. And so the Commons, by their protestation, said, in Richard II's time, that it was a novelty, and should not be drawn into consequence or example.

Now, my Lord, if your Lordship pleases, if this matter that was commanded the Bishops to do were something which the law did not allow of, surely then my Lords the Bishops had all the reason in the world to apply themselves to the King, in an humble manner to acquaint him why they could not obey his commands, and to seek relief against that which lay so heavy upon them.

Truly, my Lord, Mr. Attorney was very right in the opening of this cause at first; that is, that the government ought not to receive affronts, nor the inferior officers are not to be affronted; a Justice of the Peace, so low a man in office, is not. For a man to say to a Justice of Peace, when he is executing his office, that he does not do right, is a great crime; and Mr. Attorney said right in it. But suppose a Justice of Peace were making of a warrant to a Constable, to do something that was not legal for him to do; If the Constable should petition this Justice of the Peace, and therein set forth, Sir, you are about to command me to do a thing which I conceive is not legal; surely that would not be a crime that he was to be punished for; for he does but seek relief, and shew his grievance in a proper way, and the distress he is under.

My Lord, this is the Bishops' case, with submission: They are under a distress, being commanded to do a thing which they take not to be legal; and they, with all humility, by way of petition, acquaint the King with this distress of theirs, and pray him, that he will please to give relief.

My Lord, there is no law but is either an Act of Parliament, or the common law: For an Act of Parliament there is none for such a power; all that we have of it in Par-

liamentary proceedings is against it; and for the common law (so far as I have read it), I never did meet of any thing of such a nature, as a grant or dispensation that pretended to dispense with any one whole Act of Parliament. I have not so much as heard of any such thing mentioned by any of the King's counsel: But here, my Lord, is a dispensation that dispenses with a great many laws at once. Truly I cannot take upon me to tell how many; there may be forty, or above, for ought I know.

Therefore, my Lord, the Bishops lying under such a grievance as this, and under such a pressure, being ordered to distribute this Declaration in all their churches, which was to tell the people they ought to be under no law in this case, which surely was a very great pressure both in point of law and conscience too, they lying under such obligations to the contrary, as they did; with submission to your Lordship, and you Gentlemen of the Jury, if they did deliver this petition, (publishing of it I will not talk of, for there has been no proof of a publication, but a delivering of a petition to his Majesty in the most secret and decent manner that could be imagined) my Lords, the Bishops, are not guilty of the matter charged upon them in this information. It has been expressly proved that they did not go to disperse it abroad, but only delivered it to the King himself: And in short, my Lord, if this should be a libel, I know not how sad the condition of us all would be, if we may not petition when we suffer.

Finch. My Lord, I challenge them to shew us any one instance of such a Declaration; such a general dispensation of laws, from the Conquest till 1672: The first unbrage of such a thing is that of Car. II. 1662; but your Lordship hears the declaration of the Parliament upon it. Before that, as there was no such thing, so your Lordship sees what the Parliament did to enable the King (not to do this thing, but something

something like it) in Richard the Second's time, where you see the Parliament did give the King a power to dispense with the statute of provisors for a time; but at the same time declared that very grant of their own to be a novelty, and that it should not be drawn into consequence or example.

My Lord, we shall leave it upon this point: To suspend laws is all one as to abrogate laws; for so long as a law is suspended, whether the suspension be temporary, or whether it be for ever; whether it be at once or at several times; the law is abrogated to all intents and purposes: But the abrogation of laws is part of the legislature, that legislative power is lodged (as I said before, and I could never find it otherwise in all our law) in King, Lords, and Commons,——

L. C. J. You did open that before, Mr. Finch.

Finch. With this, my Lord, that my Lords the Bishops, finding this order made upon them to publish this Declaration, did what in duty they were bound to do; and unless the jury do find, that they have done that which is contrary to law and to the duty of their places, and that this petition is a libel, and a seditious libel, with an intent to stir up sedition among the people (we rely upon it), my Lords the Bishops can never be found guilty upon this information.

L. C. J. Have you now done, gentlemen?

Finch. Yes, my Lord, till they give us further occasion: If they have any other evidence to offer, we must answer it; if not, this the answer we give to what they have said.

Sol. Gen. We make no bargain with you: If you have done, say so.

L. C. J. You must know, that you are not to have the last word.

Sol. Gen. You have been three hours already: If you have any more to say, pray conclude.

Finch. If they say they have no more evidence, then we know what we have to do.

L. C. J. If you do say any thing more, pray let me advise you one thing; don't say the same thing over and over again; for after so much time spent, it is irksome to all company, as well as to me.

Finch. My Lord, we have no more evidence to offer to your Lordship at present, unless they, by offering new evidence, give us occasion to reply upon them.

L. C. J. Gentlemen, you shall have all the legal favour and advantage that can be; but, pray, let us keep to an orderly decent method of proceeding.

Sir Robert Sawyer. Pray, my Lord, favour me a word before we conclude: My Lord, I do find very few attempts of this nature, in any King's reign.

In the reign of Henry IV. there was an Act of Parliament, that foreigners should have a free trade in the city of London, notwithstanding the franchises of London: After the Parliament rose, the King issued out his proclamation, forbidding the execution of that law, and commanding that it should be in suspense *usque ad proximum Parliamentum*; yet that was held to be against law.

L. C. J. Sir Robert Sawyer, that which you are to look to, is the publishing of this paper, and whether it be a libel or no: And as to the business of the Parliaments you mentioned, they are not to the purpose.

Sir Robert Sawyer. My Lord, I say, I would put it where the question truly lies; if they do not dispute the point, then we need not labour it; but I do not know whether they will or no, and therefore I beg your Lordship's favour to mention one case more, and that is upon the statute of 31 Hen. VIII. cap. 8. which enables the King by proclamation in many cases to create the law, which statute was repealed,

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1. Edw. VI. cap. 12. That very act does recite, that the law is not to be altered or restrained but by Act of Parliament, and therefore the Parliament enables the King to do so and so: But that was such a power, that the Parliament thought not fit to continue, and it was afterwards repealed; but it shews, that at that time the Parliament was of the same opinion as to this matter, that other Parliaments have been since.

Somers. My Lord, I would only mention the great case of Thomas and Sorrel in the Exchequer-Chamber, upon the validity of a dispensation of the statute of Edward VI. touching selling of wine: There it was the opinion of every one of the Judges, and they did lay it down as a settled position, that there never could be an abrogation, or a suspension (which is a temporary abrogation) of an Act of Parliament, but by the legislative power. That was a foundation laid down quite through the debate of the case: Indeed it was disputed, how far the King might dispense with the penalties in such a particular law; as to particular persons; but it was agreed by all, that the King had no power to suspend any law: And, my Lord, I dare appeal to Mr. Attorney-General himself, whether in the case of Godwin and Hales, which was lately in this court, to make good that dispensation, he did not use it as an argument then, that it could not be expounded into a suspension: He admitted it not to be in the King's power to suspend a law; but that he might give a dispensation to a particular person, was all that he took upon him to justify at that time.

My Lord, by the law of all civilized nations, if the Prince does require something to be done, which the person (who is to do it) takes to be unlawful, it is not only lawful, but his duty, *rescribere Principi*; this is all that is done here, and that in the most humble manner that could be

thought of. Your Lordship will please to observe how far it went, how careful they were that they might not any way justly offend the King: They did not interpose, by giving advice as Peers; they never stirred till it was brought home to themselves; when they made their petition, all they beg is, That it may not so far be insisted upon by his Majesty, as to oblige them to read it; whatever they thought of it, they do not take upon them to desire the Declaration to be revoked.

My Lord, as to matters of fact alledged in the same petition, that they are perfectly true, we have shewn by the Journal of both Houses. In every one of those years which are mentioned in the petition, the power of dispensation was considered in Parliament, and upon debate, declared to be contrary to law; there could be no design to diminish the prerogative, because the King hath no such prerogative.

Seditious, my Lord, it could not be, nor could possibly stir up sedition in the minds of the people, because it was presented to the King in private and alone: False it could not be, because the matter of it is true: There could be nothing of malice, for the occasion was not sought, the thing was pressed upon them: And a libel it could not be, because the intent was innocent, and they kept within the bounds set by the Act of Parliament, that gives the subject leave to apply to his Prince by petition, when he is aggrieved.

Then Mr. Solicitor (Sir William Williams) summed upon the evidence, and made his observations on it for the King.

Sol. Gen. My Lord, and Gentlemen of the Jury, I am of counsel in this case for the King, and I shall take leave to proceed in this method: First, I shall put the case of my Lords the Bishops, and then consider the arguments that have been used in their defence, and answer them as much as

is material to be answered; and then leave it to your Lordship, and the Jury's consideration, whether what has been said by these gentlemen, weigh any thing in this case?

First, my Lord, I take it for granted, and I think the matter is pretty plain by this time, by my Lord President's evidence and their own confession, that it is not to be disputed but that this paper was presented by these Lords to the King: I think there is no great difficulty in that matter at all; but I just touch upon it, because I would follow them in their own method.

Then, my Lord, let us take this case as it is, upon the nature of the petition, and the evidence that they have given; and then let us see, whether that will justify the thing that is done: For the business of petitioning, I would distinguish, and enquire, whether my Lords the Bishops, out of Parliament, can present any petition to the King? I do agree, that in Parliament the Lords and Commons may make addresses to the King, and signify their desires, and make known their grievances there; and there is no doubt but that is a natural and proper way of application: For in the beginning of the Parliament, there are receivers of petitions appointed, and upon debates, there are committees appointed to draw up petitions and addresses; but to come and deduce an argument, that because the Lords in Parliament have done thus, (there being such methods of proceedings usual in Parliaments) therefore my Lords the Bishops may do it out of Parliament, that is certainly a *Non sequitur*; no such conclusion can be drawn from those premises.

My Lord, I shall endeavour to lay the fact before you as it really is, and then consider what is proper for the court to take notice of, as legal proof or evidence: And I take it, all those precedents that they have produced, of what the Lords

did, and what the Commons did, in Parliament, is no warrant for them to shelter themselves under, against the information here in question.

Here Mr. Justice Powel spake aside to the Lord Chief Justice, thus:

Justice *Powel*. My Lord, this is strange doctrine; shall not the subject have liberty to petition the King, but in Parliament? If that be law, the subject is in a miserable case.

L. C. J. Brother, let him go on; we will hear him out, though I approve not of his position.

Sol. Gen. The Lords may address to the King in Parliament, and the Commons may do it; but therefore, that the Bishops may do it, out of Parliament, does not follow: I heard nothing said that could have given colour to such a thing, but the curse that has been read in 1 Eliz.

But pray, my Lord, let us consider that evidence they have given; they have begun with that record in Richard the Second's time; and what is that? That the King may dispense with the statute of provisors, till the meeting of the next Parliament, and a protestation of the Commons at the end of it, whether that be an Act of Parliament that is declaratory of the common law, or introductory of a new law, *non constat*; and for ought appears, it might be a declaratory act; and if so, it is a proof of the King's prerogative of dispensing. It might be an act in affirmance of the King's prerogative, as there are a great many such, we very well know; and generally most of the laws in that kind, are in affirmance of the King's power; so that the law turns as an argument for the King's prerogative, and they have given him that which will turn upon themselves: So it stood in Richard the Second's time; but whether that be an argument one way or other conclusive, is left to your Lordship and the jury.

Ay

Ay but, say they, there is no execution of such a power, till very lately; and the first instance they produce, is, that in the year 1662: But your Lordship knows, that before the reign of Henry IV. there was great jurisdiction assumed by the Lords in original causes: Then comes the statute of appeals, 1 Hen. IV. which takes notice, that before that time, the Lords had assumed an original jurisdiction in all causes, and would proceed, and determine them in Parliament and out of Parliament; and it fell out to be so great a grievance, that it was thought necessary to make a law against it, that appeals in Parliament should be abolished and destroyed; and then comes that law in favour of the subjects of England, and that settles the bounds between the King and the Lords, in a great measure: Before that time, the Lords were grown very powerful, and where there is a power, there always will be applications: And what is the effect of that statute, 1 Hen. IV? for all that we endeavour is, to make things as plain as can be, that no further applications, no accusations, no proceedings in any case whatsoever, be before the Lords in Parliament, unless it be by impeachment of the Commons; so that there is the *salvo*, and the use that I make of it, is this: The Commons, by that very statute, did abolish the power that the Lords had arrogated to themselves; and ordered, that they should not meddle with any cause, but upon the impeachment of the House of Commons, and establish the impeachment of the Commons, which is as antient as the Parliament, for that was never yet spoken against, the power of the Commons impeaching any person under the degree of the Prince, and that is the regular legal way; and so the Commons asserted their antient right, and whatsoever the Lords took notice of, must come by application of the Commons; then conferences were to pass between the

Houses, and both Houses, by addressees, apply to the King: This is the proper way and course of Parliament, of which my Lord Cook says, it is known to few, and practised by fewer; but it is a venerable honourable way, and this is the course that should have been taken by my Lords here, and they should have stayed till the complaint had come from the Commons in Parliament, and then it had been regular for them to address to the King: But they were too quick, too nimble.

And whereas the statute of Hen. IV. says, that no Lord whatsoever shall intermeddle with any cause, but by the impeachment of the Commons, they interpose, and give their advice before their time; and if there be any irregularity in Parliament, or out of Parliament, the Commons are to make their complaint of it; and a man must not be his own Judge, nor his own carver; nor must every man create difficulties of his own, nor set upon petitioning in this sort: But there I lay my foundation, that in such a matter as this, there ought to have been the impeachment of the Commons in Parliament, before these Lords could do any thing: And I know nothing can be said for the Bishops more than this, that they were under an *Anathema*, under the curse that Sir Robert Sawyer speaks of; and for fear of that, they took this irregular course. But some would say, better fall into the hands of God than of men: Some would say so, (I say) I know not what they would say: But these being the methods that these Lords should have taken, they should have pursued that method: The law should have carved out their relief and remedy for them; but they were for going by a new fancy of their own.

My Lord, the law continued thus, and was practised so till 3 Hen. VII. where the grievance was found, that offences in the intervals of Parliament could not well be punished:

punished: And then comes the statute that sets up the Court of Star-Chamber; and there men were often brought to judgment and punishment for their sins: And though very great power was given them, yet they arrogated to themselves a greater; and therefore that court is abolished by the statute of 15 Car. I. And what is the reason of abolishing that statute? Because the Star-Chamber did not keep within their bounds that the law set them, but assumed to themselves a larger power than the law would allow; and grew very exorbitant and very grievous to the subject. And another reason was, which the statute of 15 Car. I. founded itself upon, because there was nothing that was brought in judgment before that court, but might be relieved and remedied in the ordinary methods of justice in the courts in Westminster-Hall: So that upon these two considerations, because that course was exorbitant, and because all the sins and misdemeanors that were punished there, might be punished in an ordinary way of law in another court, and therefore there was no need of that court; and so it was abolished, and the subject was pretty safe. If there was a crime committed here, a man might come properly before your Lordship into this court, and have it punished.

My Lord, they find fault with the words in the information, and they say, why are these words put in, *sedition, malicious*? If the matter be libellous and seditious, we may lawfully say so; and it is no more than the law speaks; it results out of the matter itself; and if it be a libellous paper, the law says, it is maliciously and seditiously done. And these gentlemen need not quarrel with us, for so are all the informations in all times past; and 'tis no more than the *vi & armis*, which is common form. It may be said, how can the publishing of a libel be said to be done *vi & armis*? That is only a supposition of law; and they may as well object to the con-

clusion of the information, that it was *contra coronam, et dignitatem Domini Regis*. If it be an illegal thing, or a libel, these are necessary consequences: It is no more than the speaking of the law upon the fact.

But, my Lord, let us a little consider, whether this matter were warrantable, and whether they had any warrant to do what was done: They pretend it was done upon this account, that the King had set forth a Declaration, and had ordered them to read it; which to excuse themselves from, they make this petition, or this libel, (call it what you will): And they use this as the main argument, that they say the King has done illegally; and they tell the King plainly so, that it is illegal: For they take notice of this Declaration, and say it is illegal, because it is contrary to the Declarations of Parliament in 1662, 1672, and 1685.

Pray, my Lord, let us consider a little, whether there be any Declaration in Parliament that they have given evidence of: Have they read any Declaration of the Parliament 1662? What is a Declaration in Parliament, but a bill that is passed by the King, Lords, and Commons? That we know to be the meaning, and no other: If it pass the Commons it is no Declaration in Parliament; nay, if it pass the Lords and Commons, it is not a Declaration in Parliament, except it also pass the King. All these things are nullities, and the law takes no notice of them: We have it in our books over and over; and no court ought to suffer such evidence to be given. I know these gentlemen are very well acquainted with the authority in Fitz-Herbert's Title Parliament: There was an Act that was said to be by the King and the Lords; but because the Commons did not agree to it, it is declared and adjudged to be a nullity; and the court would take no notice of it, and how can any man call that a declaration in Parliament which is only a
vote

vote of the House of Commons, or of the Lords? No sure; that is one of the heads I go upon: It is not a declaration in Parliament, unless it be by an Act of Parliament.

Indeed, my Lord, there is another sort of a declaration in Parliament before the Lords, as they are a court of judicature, and that is a fair declaration too; for if any thing comes judicially before the Lords, either by writ of error, or by natural appeal from any of the other courts, or by adjournment, and there be any judgment given, that is a declaration in Parliament, and may be fairly so called. So likewise there is another judicial declaration, which is, when any thing comes before the Lords judicially, upon an impeachment of the Commons, and they give judgment, that is a declaration in Parliament: But to say, that there is any other declaration in Parliament, is to say more than these gentlemen can make out. If they will shew me any such, I will submit to them, and not speak a word against my Lords the Bishops; but if these learned gentlemen cannot shew me any such, then they have not said that was true in this petition, that it was so and so declared in Parliament.

For let us consider what there is in this case upon this evidence; for that in 1662 is only a vote and an opinion of the House of Commons: And I always understood, and have been told so by some of the gentlemen of the other side, that such a vote signifies nothing; but besides, it seems to be a mistaken address; for they say in it, that the declaration in 1662, which they address against, was the first declaration of that sort, to suspend laws without Act of Parliament; and yet in the same breath they do take notice of the King's declaration from Breda. But here is a mighty argument used from the King's speech, that because he wished he had such a power, this must be declared in Parliament that he had

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no such power. Is the speech of the Prince a declaration in Parliament? All the speeches that were made upon the opening of the Parliament, will you say they are declarations in Parliament? Then the Chancellor, or the Keeper's speech, or the Lord Privy Seal's, must be a declaration in Parliament. Whoever speaks the sense of the King, if he does not speak that which is law and right, is questionable for it; and several have been impeached for so doing; for they look not upon it as the King's speech, except it be according to law; nothing can turn upon the Prince but what is legal; if it be otherwise, it turns upon him that speaks it. I never did hear that a speech made by the Chancellor (and I will appeal to all the Lords that hear me in it) was a declaration in Parliament.

Then, my Lord, we come to the business in 1672, which with that in 1662, and that in Breda, shews that this of the King's is not such a novelty, but has been done often before. In 1672, the King was in distress for money, being intangled in a Dutch war, and wanted supply: He capitulates with his Commons, you have heard it read; and, upon the Commons address, he asserts it to be his right, and makes his complaint to the Lords how the Commons had used him; for, when he gives them a fair answer, they reply, and there are conferences with the Lords about it; but at length it all ends in a speech by the King, who comes and tells them of his present necessities, and so he was minded to remit a little at the instigation of the Commons; and he has a good lump of money for it. Would this amount to a declaration in Parliament? Can my Lords the Bishops fancy or imagine, that this is to be imposed upon the King, or upon the court, for a declaration in Parliament?

Then, last of all, for that in 1685, in this King's time, what is it? The Commons make an address to the King, and

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complain

complain to his Majesty of some of his officers in his army, that might pretend to have a dispensation, something of that nature, contrary to the Test Act: And what is done upon it? They make their application to the King, and the King answers them, and that is all. But since it is spoken of in the court, I would take notice, that it is very well known by the case of Godwin and Hales, the judgment of this court was against the opinion of that address.

But what sort of evidence is all this? Would you allow all the addresses of the House of Commons to be evidence? Give me leave to say it, my Lord, if you suffer the votes, these copies of imperfect bills, these addresses and applications of one or both Houses to the King, to be evidence and declarations in Parliament, then what will become of the bill of exclusion? Shall any body mention that bill of exclusion to be a declaration in Parliament? If so, then there is declaration against declaration; the declarations of the Commons against the declaration of the Lords. I know not what judgment my Lords the Bishops may be of now, concerning those things of votes and addresses being declarations in Parliament, but I am sure they have spoken against it heretofore; nay, I am sure some of them have preached against it.

And if my Lords the Bishops have said, these are declarations in Parliament, and they are not declarations in Parliament; and if they accuse the King of having done an illegal thing, because he has done that which has been declared in Parliament to be illegal, when it was never so declared, then the consequence is very plain, that they are mistaken sometimes; and I suppose by this time they believe it.

I dare say, it will not be denied me, that the King may, by his prerogative royal, issue forth his proclamation; it is as essential a prerogative, as it is to give his assent to

an Act of Parliament to make it a law. And it is another principle, which I think cannot be denied, that the King may make constitutions and orders in matters ecclesiastical; and that these he may make out of Parliament, and without the Parliament. If the King may do so, and these are his prerogatives, then suppose the King does issue forth his royal proclamation (and such in effect is this declaration under the Great Seal) in a matter ecclesiastical, by virtue of his prerogative royal, and this declaration is read in the council and published to the world; and then the Bishops come and tell the King, Sir, you have issued out an illegal declaration, being contrary to what has been declared in Parliament, when there is no declaration in Parliament: Is not this a diminishing the King's power and prerogative, in issuing forth his declaration, and making constitutions in matters ecclesiastical? Is not this a questioning of his prerogative? Do not my Lords the Bishops, in this case, raise a question between the King and the people? Do not they (as much as in them lies) stir up the people to sedition? For who shall be judge between the King and the Bishops? Says the King, I have such a power and prerogative to issue forth my royal proclamation, and to make orders and constitutions in matters ecclesiastical, and that without the Parliament, and out of Parliament. Say my Lords the Bishops, you have done so, but you have no warrant for it. Says the King, every Prince hath done it; and I have done no more than what is my prerogative to do; but this, say the Bishops, is against law. How shall this be tried? Should not the Bishops have had the patience to have waited till a Parliament came? When the King himself tells them, he would have a Parliament in November at the furthest.

L. C. J. Pray, Mr. Solicitor, come close to the business, for it is very late.

Sol. Gen.

Sol. Gen. My Lord, I beg your patience, you have had a great deal of patience with them; pray spare me a little. I am saying, When the King himself tells them that he would have a Parliament in November at furthest, yet they have no patience to stay till November, but make this application to him: Is not this raising a question upon the King's prerogative in issuing forth declarations? and upon the King's power and right in matters ecclesiastical? And when I have said this, that my Lords the Bishops have so done; if they have raised a question upon the right of the King, and the power of the King in matters ecclesiastical, then they have stirred up sedition. That they have so done, is pretty plain; and for the consequence of it, I shall appeal to the case in the 2 Cro. 2 Jac. I. That it is a plain direct authority for me.

Just. Powel. Nay, Mr. Solicitor, we all very well know, to deny the King's authority in temporals and spirituals, as by Act of Parliament, is high-treason.

Sol. Gen. I carry it not so far, Sir: We have a gracious Prince, and my Lords the Bishops find it so by this prosecution. But what says that case? It is printed in three books, in Noy 100, in Moor 375, and in Mr. Just. Cro. 371, says that case, the King may make orders and constitutions in matters ecclesiastical.

Just. Powel. But how will you apply that case to this in hand, Mr. Solicitor?

Sol. Gen. I will apply it by and by, Sir. I would first shew what it is: There is a convention of the greatest men in the kingdom—

Just. Powel. Indeed, Mr. Solicitor, you shoot at rovers.

Sol. Gen. There is the Lord Privy Seal, the Archbishop of Canterbury, and a great many others: It is the greatest assembly we meet with in our books; and all of them are of this opinion, that the King may

make orders and constitutions in matters ecclesiastical.

My Lord, there is another authority, and that is, from the stat. 1 Eliz. which erected the High Commission Court; and that statute was not introductory of a new law, but declaratory of the old law. The King by his proclamation, declares his sense to do such and such a thing; the court, and all persons there, give their judgment and opinion upon that statute, that they looked upon it as the grossest thing, and the foulest affront to the Prince, for any man to bring into question that power of the King in matters ecclesiastical; it is said to be a very high crime. Why then, my Lord, what is done in this case?

Just. Powel. Mr. Solicitor, pray, when you are applying, apply that other part of the case too, which says, it was a heinous offence, to raise a rumour that the King did intend to grant a general toleration: And is there any law since that has changed it, Mr. Solicitor?

Sol. Gen. In the main, judgment goes another way: As for that part, it was personal to the Prince that then was, of whom they had scandalously reported, that he intended to do such a thing. They looked upon it as a scandal to King James; that it was a sowing sedition, and stirring up people against the government; and that will come up to our case: For as some men do it on the right side, others do it on the left: And whoever he be that endeavours to bring a dislike of the King in the people, that is moving sedition against the Prince; but that is personal to the Prince himself, and does not go to his successors.

Now, my Lord, I come to that which is very plain, from the case of *De Libellis Famosis*: If any person, in any paper, have slandered the government, you are not to examine who is in the right, and who is in the wrong; whether what they said to be done by the government be legal or no; but

but whether the party have done such an act. If the King have a power (for still I keep to that) to issue forth proclamations to his subjects, and to make orders and constitutions in matters ecclesiastical; if he does issue forth his proclamation, and make an order upon the matters within his power and prerogative; and if any one would come and bring that power in question, I say that is sedition; and you are not to examine the legality, or illegality of the order or proclamation: And that I think is very plain upon that case, in the 5th report; for it says, If a person does any thing that is libellous, you shall not examine the fact, but the consequence; whether it tended to stir up sedition against the public, or to stir up strife between man and man. In the case of private persons, as if a man should say of a judge, he has taken a bribe, and I will prove it: This is not to be sent in a letter; but they must take regular way to prosecute it according to law.

If it be so in the case of an inferior magistrate, what must it be in the case of the King? To come to the King's face, and tell him (as they do here) that he has acted illegally, doth certainly, sufficiently prove the matter to be libellous. What do they say to the King? They say and admit, that they have an averfeness for the declaration; and they tell him from whence that averfeness doth proceed; and yet they insinuate, that they had an inclination to gratify the King, and embrace the Dissenters, that were as averse to them as could be, with due tenderness, when it should be settled by Parliament and Convocation. Pray, what hath their Convocation to do in this matter?

L. C. J. Mr. Solicitor General, I will not interrupt you; but, pray, come to the business before us; shew us that this is in diminution of the King's prerogative; or that the King ever had such a prerogative.

Sol. Gen. I will, my Lord; I am observing what it is they say in this petition—They tell the King, it is inconsistent with their honour, prudence, and conscience, to do what he would have them to do; and if these things are not reflective upon the King and government, I know not what is: This is not in a way of judicature; possibly it might have been allowable to petition the King to put it into a course of justice, whereby it may be tried; but alas! there is no such thing in this matter. It is not their desire to put it into any method of trial; and so it comes in the case *De Libellis Famosis*; for by this way, they make themselves judges, which no man by law is permitted to do. My Lords the Bishops have gone out of the way; and all that they have offered does come home to justify them; and therefore I take it, under favour, that we have made it a good case for the King: We have proved what they have done; and whether this be warrantable or not is the question, gentlemen, that you are to try. The whole case appears upon record; the declaration and petition are set forth, and the order of the King and council. When the verdict is brought in, they may move any thing what they please in arrest of judgment: They have had a great deal of latitude, and taken a great deal of liberty; but truly, I apprehend, not so very pertinently. But I hope we have made a good cause of it for the King, and that you, gentlemen, will give us a verdict.

Just. Holloway. Mr. Solicitor, there is one thing I would feign be satisfied in; you say the Bishops have no power to petition the King.

Sol. Gen. Not out of Parliament, Sir.

Just. Holloway. Pray give me leave, Sir. Then the King having made such a declaration of a general Toleration and Liberty of Conscience; and afterwards he comes and requires the Bishops to disperse this declaration;

claration; this they say, out of a tenderness of conscience, they cannot do, because they apprehend it contrary to law, and contrary to their function. What can they do, if they may not petition?

Sol. Gen. I will tell you what they should have done, Sir. If they were commanded to do any thing against their consciences, they should have acquiesced till the meeting of the Parliament.

[At which some people in the court hissed.]

Att. Gen. This is very fine, indeed: I hope the court and the jury will take notice of this carriage.

Sol. Gen. My Lord, it is one thing for a man to submit to his Prince, if the King lay a command upon him that he cannot obey, and another thing to affront him. If the King will impose upon a man what he cannot do, he must acquiesce; but shall he come and fly in the face of his Prince? Shall he say it is illegal? and that the Prince acts against prudence, honour, or conscience; and throw dirt in the King's face? Sure that is not to be permitted; that is libelling with a witness.

L. C. J. Truly, Mr. Solicitor, I am of opinion, that the Bishops might petition the King, but this is not the right way of bringing it; I am not of that mind, that they cannot petition the King out of Parliament; but if they may petition, yet they ought to have done it after another manner; for if they may in this reflective way petition the King, I am sure it will make the government very precarious.

Just. Powel. Mr. Solicitor, it would have been too late to stay for a Parliament, for it was to have been distributed by such a time.

Sol. Gen. They might have laid under it, and submitted.

Just. Powel. No, they would have run into contempt of the King's command, without petitioning the King not to insist upon it; and if they had petitioned, and not have shewn the reason why they could

not obey, it would have been looked upon as a piece of fullness; and that they would have been blamed for, as much on the other side.

L. C. J. I do assure you, if it had not been a case of great concern, I would not have heard you so long: It is a case of a very great concern to the King and the government on the one side, and to my Lords the Bishops on the other; and I have taken all the care I can to observe what has been said on both sides. It is not to be expected that I should repeat all the speeches, or the particular facts; but I will put the jury in mind of the most material things, as well as my memory will give me leave; but I have been interrupted by so many long and learned speeches, and by the length of the evidence which has been brought in, in a very broken, unmethodical way, that I shall not be able to do so well as I would.

Gentlemen, thus stands the case: It is an information against my Lords the Bishops, his Grace my Lord of Canterbury, and the other six noble Lords; and it is for preferring, composing, making, and publishing, and causing to be published, a seditious libel: The way that the information goes is special, and it sets forth, that the King was graciously pleased, by his royal power and prerogative, to set forth a declaration of indulgence for Liberty of Conscience, in the third year of his reign; and afterwards, upon the 27th of April, in the fourth year, he comes and makes another declaration; and afterwards, in May, orders in council, that this declaration should be published by my Lords the Bishops in their several dioceses; and after this was done, my Lords the Bishops come and present a petition to the King, in which were contained the words which you have seen.

Now, gentlemen, the proofs that have been upon this, you will see what they are; the two declarations are proved by the clerks of the council, and they are brought here

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under the Great Seal: A question did arise, whether the prints were the same with the original declarations? and that is proved by Hills, or his man, that they were examined, and are the same: Then the order of council was produced by Sir John Nicholas, and has likewise been read to you; then they come to prove the fact against the Bishops, and first they fall to proving their hands; they begun indeed a great way off, and did not come so close to it as they afterwards did; for some of their hands they could hardly prove, but my Lord Archbishop's hand was only proved, and some others; but there might have been some question about that proof, but afterwards it came to be proved, that my Lords the Bishops owned their hands; which, if they had produced at first, would have made the cause something shorter than it was.

The next question that did arise, was about the publishing of it, whether my Lords the Bishops had published it? and it was insisted upon, that no body could prove the delivery of it to the King: It was proved the King gave it to the council, and my Lords the Bishops were called in; there they acknowledged their hands, but nobody could prove how it came to the King's hands; upon which we were all of opinion, that it was not such a publishing as was within the information; and I was going to have directed you, to find my Lords the Bishops not guilty; but it happened, that being interrupted by an honest, worthy, learned gentleman, the King's council took the advantage, and informing the court that they had further evidence for the King, we staid till my Lord President came, who told us how the Bishops came to him to his office at Whitehall, and after they had told him their design, that they had a mind to petition the King, they asked him the method they were to take for it, and desired him to help them to the speech of the King: And he tells them he will

acquaint the King with their desire, which he does; and the King giving leave, he comes down, and tells the Bishops, that they might go and speak to the King when they would; and (says he) I have given direction that the door shall be opened for you as soon as you come: With that the two Bishops went away, and said, they would go and fetch their other brethren; and so they did bring the other four; but my Lord Archbishop was not there; and immediately when they came back, they went up into the chamber, and there a petition was delivered to the King. He cannot speak to that particular petition, because he did not read it; and that is all he knew of the matter, only it was all done the same day, and that was before my Lords the Bishops appeared in council. Gentlemen, after this was proved, then the defendants came to their part, and these gentlemen that were of counsel for my Lords set themselves into their defence by notable learned speeches, by telling you, that my Lords the Bishops are guardians to the church, and great Peers of the realm, and were bound on conscience to take care of the church: They have read you a clause of a statute made in Queen Elizabeth's time, by which they say, my Lords the Bishops were under a curse, if they did not take care of that law. Then they shew you some records; one in Richard the Second's time, which they could make little of, by reason their witnesses could not read it; but it was, in short, a liberty given to the King to dispense with the statute of provisors. Then they shew you some journals of Parliament, first in the year 1662, where the King had granted an indulgence; and the House of Commons declared it was not fit to be done, unless it were by Act of Parliament; and they read the King's speech, wherein he says, he wished he had such a power; and so likewise in 1672, which is all nothing but addresses and votes, or orders of the House,

House, or discourses, either the King's speech, or the subjects addresses; but these are not declarations in Parliament, that is insisted upon by the counsel for the King, that what is a declaration in Parliament, is a law, and that must be by the King, Lords, and Commons; the other is but common discourse, but a vote of the House, or a signification of their opinion, and cannot be said to be a declaration in Parliament. Then they come to that in 1685, where the Commons take notice of something about the soldiers in the army, that had not taken the test, and make an address to the King about it; but in all these things (as far as I can observe) nothing can be gathered out of them one way or other; it is all nothing but discourses. Sometimes this dispensing power has been allowed, as in Richard the Second's time, and sometimes it has been denied, and the King did once wave it; Mr. Solicitor tells you the reason, there was a lump of money in the case: But I wonder indeed to hear it come from him.

Sol. Gen. My Lord, I never gave my vote for money, I assure you.

L. C. J. But those concessions which the King sometimes makes for the good of the people, and sometimes for the profit of the Prince himself, (but I would not be thought to distinguish between the profit of the Prince and the good of the people, for they are both one; and what is the profit of the Prince, is always for the good of the people;) but I say, those concessions must not be made law, for that is reserved in the King's breast to do what he pleases in it at any time. The truth of it is, the dispensing power is out of the case, it is only a word used in the petition; but truly I will not take upon me to give my opinion in the question, to determine that now, for it is not before me; the only question before me is, and so it is before you, gentlemen, it being a question of fact, whether here be

a certain proof of a publication? and then the next question is a question of law indeed; whether, if there be a publication proved, it be a libel?

Gentlemen, upon the point of the publication I have summed up all the evidence to you; and if you believe, that the petition which these Lords presented to the King, was this petition; truly, I think, that is a publication sufficient; if you do not believe it was this petition, then my Lords the Bishops are not guilty of what is laid to their charge in this information, and consequently there needs no inquiry, whether they are guilty of a libel: But if you do believe that this was the petition they presented to the King, then we must come to enquire, whether this be a libel.

Now, gentlemen, any thing that shall disturb the government, or make mischief, and a stir among the people, is certainly within the case of *Libellis Famosis*; and I must in short, give you my opinion, I do take it to be a libel. Now, this being a point of law, if my brothers have any thing to say to it, I suppose they will deliver their opinions.

Then Mr. Justice Holloway delivered his opinion, and said; as it was the right of every subject to petition, it could not be a fault, unless it were done with an ill intent: Indeed if the jury were satisfied it was done with an ill intention, as to raise sedition or the like, they ought to find them guilty; but if they did deliver the petition to save themselves harmless, and to free themselves from blame, by shewing the reason of their disobedience to the King's command, which they apprehended to be a grievance to them, and which they could not in conscience give obedience to, he could not think it was a libel.

The jury had leave to send for wine, and desiring they might have the papers out with them, which had been given in evidence

dence, the Chief Justice said, they might have a copy of the information, the libel, and the declaration under seal, but not the votes of the House of Commons, or the journals; for they could have no paper that was not under seal.

The jury then withdrawing, remained together all night, without fire or candle; and the court sitting again next morning, (being Saturday the 30th of June) the Bishops came into court, and the jury brought in their verdict, that the defendants were Not Guilty.

At which the people shouting, Mr. Solicitor moved they might be committed; and a gentleman of Gray's-Inn was apprehended, to whom the Chief Justice said, I am as glad, Sir, as you can be, that my Lords the Bishops are acquitted; but your manner of rejoicing in court is indecent; However he was soon after discharged.

Then the court arose, and my Lords the Bishops were permitted to return home, the Attorney General informing the court he had nothing more against them.

The End of the First Volume.

